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INTRODUCTION

At its 262nd (March-April 1995) Session the Governing Body decided to include the question of contract labour in the 1997 agenda of the International Labour Conference as a new technical standard-setting item.

In accordance with article 39 of the Standing Orders of the Conference, which deals with the preliminary stages of the double-discussion procedure, the Office drew up a preliminary report,[1] intended to serve as the basis for the first discussion of this question. After briefly summarizing the background to the Governing Body's decision, that report examines the law and practice on the subject in various countries. The report, accompanied by a questionnaire, was communicated to the governments of the member States of the ILO, which were invited to send their replies so as to reach the Office not later than 30 June 1996.

At the time of drawing up this report, the Office had received replies from governments of the following 84 member States:[2] Angola, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Japan, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mali, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay, Yemen, Zimbabwe.

The attention of governments was drawn to article 39, paragraph 1, of the Standing Orders of the Conference, in which they are requested "to consult the most representative organizations of employers and workers before finalizing their replies"; governments were asked to indicate which organizations had been so consulted.

The governments of the following member States pointed out that the employers' or workers' organizations had been consulted or involved in the drafting of the replies: Belarus, Cambodia, Canada, Chad, Comoros, Costa Rica, Singapore, South Africa.

The governments of the following member States included in their replies the opinions of employers' and workers' organizations: Austria, Czech Republic, Estonia, Finland, Ghana, Hungary, Norway, Uruguay.

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[1] ILO: *Contract labour*, Report VI (1), International Labour Conference, 85th Session, Geneva, 1997.

[2] Replies that arrived too late to be included in the report may be consulted by delegates at the Conference.

The governments of the following member States sent separately the replies from employers' or workers' organizations; and in some cases these replies were received directly at the Office: Australia, Barbados, Belgium,[3] Brazil, Canada, Colombia, Costa Rica, Cyprus, Germany, Greece, Italy, Japan, Jordan, Netherlands, New Zealand, Poland, Portugal, Rwanda, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States.

In accordance with article 39, paragraph 1, of the Standing Orders of the Conference, the replies from the most representative employers' or workers' organizations are reproduced or mentioned in this report.

If the Conference decides that it is advisable to adopt one or more international instruments, the Office will draw up, on the basis of the conclusions adopted by the Conference, one or more draft instruments to be submitted to governments. It will then be for the Conference to make a final decision on the subject at a further session.

This report has been drawn up on the basis of the replies received, the substance of which, together with brief comments, is given in the following pages. The Proposed Conclusions, which have been drafted with due account taken of the views of the ILO tripartite constituency on the subject, appear at the end of the report.

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[3] The Government of Belgium sent, with its reply, an opinion from the National Labour Council.

REPLIES RECEIVED AND COMMENTARIES

This section contains the substance of the general observations made by governments and of their replies to the questionnaire, as well as of replies received from the employers' and workers' organizations.

After examining the general observations, each question is reproduced and followed by a list indicating the governments that replied to it, grouped in accordance with the nature of the replies (affirmative, negative or other). Where a government submitted observations qualifying or explaining its reply, and where observations have been received from employers' and workers' organizations, the substance of each observation is given in alphabetical order of countries, after the above-mentioned list. Observations that are the equivalent of a simple affirmative or negative reply are not reproduced unless they are replies of workers' or employers' organizations which differ from the replies of their respective governments. Where a government deals with several questions in one reply, the substance of its reply is given under one of these questions.

Some governments, in their replies, communicated information on the national law and practice. This information, whilst most useful for the work of the Office, has not been reproduced unless it is essential to an understanding of the relevant reply.

The summary of the observations on each question is followed by a brief Office commentary referring to the relative Point (or Points) of the Proposed Conclusions at the end of this report.

General observations

Austria. Association of Austrian Manufacturers (VÖI): The discussion in Austria and abroad on employment issues has shown that growing importance is being attached to more flexible employment relations. Whenever such relations are regulated, attention should be given to ensuring sufficient flexibility for enterprises, allowing them to react rapidly to changing markets, to justified worker claims for adequate social protection and to the general concern for job creation. Individual States are perfectly capable of addressing new forms of employment (including those under consideration here) in their legislation and/or via arrangements between the social partners in keeping with local conditions. Consequently, the VÖI does not consider it necessary to create international instruments in this field, in particular in the light of the inherent risk of bureaucratic, extraneous barriers being erected in the path of labour market and employment policy action designed to protect and create jobs.

Austrian Business Chamber (WKÖ): The WKÖ does not believe it would be opportune for the International Labour Conference to adopt one or several instruments regarding contract labour. Firstly, the term "contract labour" is not customary in Austria; secondly, manpower hire/supply (i.e. the phenomenon largely addressed by the term) has been the subject of national legislation for several years. Hence, the adoption of ILO texts could render Austria's ratification of such instruments impossible in as much as they would probably not correspond to the details of Austrian law. If any document is to be adopted at all, it should be in the form of a Recommendation, leaving as much leeway as possible to national legislation. The definitions themselves show that these arguments are well-founded. In Austria major efforts have been made to agree upon different concepts, and the proposals contained in the questionnaire would only create difficulties. Consequently, the WKÖ rejects them. For the reasons explained above, it refrains from responding to the questions regarding the documents' contents.

Federal Chamber of Labour (BAK): The BAK emphatically welcomes the fact that the ILO has selected this agenda item (which has already been discussed in Austria and has resulted in the adoption of legislation, e.g. the Manpower Hire/Supply Act, and the incorporation of individual employment contracts into the social insurance system). It is urgently necessary to establish international standards in this field with a view to ensuring that the protection of working conditions and social security, already achieved in many countries, is not undermined. The ILO's approach, clearly recognizable from the relevant questionnaire, is fundamentally reasonable and well-founded.

Belgium. Under Belgian law a distinction is made between labour subcontracting, which consists of making workers available to a user enterprise (either under a temporary work arrangement or under another form of labour supply), and subcontracting of work or services, whereby a subcontractor undertakes to produce goods or render services for a user enterprise, irrespective of the dependency relationship that may exist between the subcontractor and the user. Only the former is subject to regulation (viz. the Act of 24 July 1987 on temporary work, interim work and lease of workers to a user enterprise). Legal subordination, and not only economic dependency, is the element that would be taken into account from the workers' standpoint. The following conclusions may be drawn from such a basic distinction: (i) whether they are supplied to a user enterprise or work within the framework of a subcontracting arrangement in the broader sense, it is important that all workers enjoy the same basic rights that are granted under Belgian law (see, in particular, reply to question (8)); (ii) alignment of the working conditions afforded to workers of a subcontractor that provides goods or renders services to a user enterprise on the working conditions that prevail in the user enterprise would be acceptable only where the user enterprise actually enjoys a part of the legal authority that belongs to the employer of the worker, which only exists within the framework of the lease of workers as regulated by the said Act of 24 July 1987.

National Labour Council (CNT): A clear distinction exists between proper subcontracting and the supply of workers. The former involves the delivery of goods or the rendering of services by a subcontractor for a user enterprise. Employees of the subcontractor are in an employment relationship with the subcontractor, not with the user enterprise. However, certain rules have been enacted to make the user enterprise liable toward the workers of subcontractors in respect of various issues. The user enterprise is thus responsible for safety and health matters with respect to the workers of external enterprises who perform work on the user's premises. Also, in the construction industry the principal entrepreneur can be made jointly and severally responsible with subcontractors where the latter have failed to meet a number of administrative obligations (registration, delivery of social identity cards to the workers, payment of social security contributions). Where the subcontractor is himself or herself a self-employed worker, litigation may arise concerning the true nature of the relationship existing between the subcontractor and the user enterprise. Should it be demonstrated that legal subordination actually existed, the contract for services between the user enterprise and the subcontractor would be treated like a contract of employment. Concerning certain professional activities, the law on contracts of employment further presumes that such activities are rendered pursuant to a contract of employment, not a contract for services. With regard to the supply of workers to a user enterprise, it can only be done within the framework of the Act of 24 July 1987. Should the user enterprise engage supplied workers in breach of the law, the worker and the user enterprise would be deemed to be linked by a contract of employment of unlimited duration; furthermore, the user and the subcontractor would be made jointly and severally responsible for the obligations arising out of the employment relationship. Despite the fact that proper subcontracting belongs to the domain of civil or commercial law, it may have a bearing on labour law and social security. Having regard to this, the following issues would deserve special consideration at the international level: (a) safety and health issues where contract workers perform work in the premises of the user enterprise; (b) the need to monitor compliance with social security obligations and regulations by subcontractors. This may justify the adoption of specific instruments such as rules imposing registration and establishing financial joint liability in activities where it is customary to have recourse to a chain of subcontractors; (c) the information which should be provided by the employer to consultative and representative bodies that operate in the enterprise; (d) the role of the social partners at the sectoral level with respect to the conclusion of collective agreements which would apply to all workers in the sector concerned, with a view to harmonizing the conditions of work in that sector. Several branches of activity have concluded agreements which, inter alia, deal with modalities of recourse to subcontracting and protection of workers.

Colombia. National Association of Manufacturers (ANDI): ANDI feels it both premature and inappropriate to attempt to regulate by way of an international instrument a situation in which, like subcontracting, characteristics typical of both the commercial and the labour spheres can be found. Such regulation would go against the trend towards flexibility that is conducive to efficiency, competitiveness and job creation. Given the wide range of forms of work presented in the instrument which display characteristics inherent in both labour contracting and commercial issues, there is a considerable risk of not achieving an appropriate level of protection for the workers involved, and interfering in matters that are primarily of a commercial nature, by applying restrictions to them which, being labour-related, lack any real relevance for them.

Cyprus. Cyprus Employers' and Industrialists' Federation (OEB): The OEB strongly opposes the adoption of the ILO instrument(s) on contract labour. There is no evidence that any exploitation on the issue under discussion exists, and the adoption of a Convention on the subject is therefore of no use. Any attempt to adopt a Convention will give rise to many definitional issues. Contract labour necessarily involves a commercial relationship and a Convention should not seek to interfere in this area. Attempts to make user enterprises responsible for contract labour as though an employer-employee relationship exists will inevitably involve interference in commercial opportunities. Such a Convention will also increase the cost of using contract labour without any sound reason for doing so.

Denmark. It is regrettable that contract labour has been prematurely pressed forward as a standard-setting item. It is an extremely broad and complicated issue, and one can hardly imagine that one instrument can deal with all aspects in a balanced and fair way. There are at least two main groups of contract labour which must be treated separately, i.e. those involving two parties, and those involving three parties. The first group is characterized by the problem of whether the person who is to perform work shall be considered as an employee or a self-employee. The second group is characterized by the problem of who is the employer and, if it is a "third party", whether it can be accepted that the user enterprise frees itself from its obligations in this way. Criteria should be established to determine if an employment relationship exists; if certain powers are vested in one out of several enterprises, that enterprise should be considered to be the employer. It is important to realize that a broader discussion concerning contract labour will probably be closed for a number of years if an instrument is adopted; therefore, people with contract labour problems would perhaps be better helped by a thorough discussion which could lead to the adoption of instruments at a later stage. However, if it is decided to go ahead with regulation in this field, it should be done as flexibly as possible.

Germany. The subjects under consideration — just as in the case of temporary workers and homeworkers — raise the complex issue of the borderline between dependent employment and self-employment. Under national law these involve different sets of regulations which could only be transposed into an international instrument with difficulty or in general form. The term "contract labour" covers two completely different areas: (i) at least certain aspects of manpower hire/supply; (ii) the borderline between an employment relationship and forms of self-employment. It is true that both forms of employment involve several characteristics justifying protection for the employed person. The differences between the relevant contractual forms — and, consequently, the approach to possible protection measures under a national legal system — are such decisive factors that joint treatment in one instrument of the types of case under consideration should certainly be avoided. With regard to the employment relationship, it should be remembered that a separate ILO Convention and accompanying Recommendation already exist on home work, which is also a sub-category on the borderline between dependent and self-employment. The special nature of the subject is a strong indication that it should in no way be incorporated into the document under examination.

Confederation of German Employers' Associations (BDA): For fundamental reasons the BDA does not consider the planned adoption of new international instruments on "contract labour" to be useful or necessary and is consequently opposed to them. It suggests that, instead of a standard-setting exercise and for the purposes of a possible examination of alternative, more suitable measures, a general discussion be held on these complex issues at the 1997 Session of the Conference. There is, in fact, no need for an international standard, and no clear answer as to what the standard-setting action on the subject should imply. The BDA also has considerable doubts as to whether it is at all possible to produce any international standard regarding "contract labour". The difficulties encountered by the European Union (EU) in its attempts to legislate on atypical forms of employment also militate against an international instrument governing contract labour. Given that these issues have not yet been satisfactorily resolved after more than a decade's discussion within the more transparent and homogeneous area covered by European law, it would appear unrealistic, within the ILO's rigid double-discussion standard-setting procedure, to hope to produce adequate instruments aspiring to worldwide validity. Even if it is assumed that it is fundamentally feasible to establish an international standard for "contract labour", regulations on the subject appear premature at this stage. Were a Convention on "contract labour" to be adopted, it would only have limited prospects of ratification and would weaken the authority of the ILO's standard-setting system as a whole. The ILO's competence in the matter of "contract labour" is also dubious. According to the Preamble of the ILO Constitution, the ILO pursues the objective of improving working conditions worldwide. Above and beyond labour law, however, the questionnaire is aimed at intervention in the general field of the law of contracts and, in particular, of job-contracting law.

German Confederation of Trade Unions (DGB): The DGB welcomes the double discussion of new instruments concerning the social protection of contract workers. Often these workers do not enjoy the same protection as regular employees; in addition, regular employees are at risk of being replaced by these new forms of employment. The envisaged standards should aim to prevent as far as possible any exclusions from general labour and social protection, and they should guarantee comparable wages and working conditions. In view of the complexity of the problem, the provisions of the instrument on contract labour should be as specific as possible. Questions concerning the form and the content of an instrument to be adopted require first of all a clear understanding of the meaning of the term "contract labour". There are very few common criteria applicable to these different forms of employment or contract; in Germany they are subject to different regulations. This applies not only to their purpose but also to their content and possible legal implications. The objective pursued with the drafting of this instrument is very clear. Obviously it is based on considerations discussed and referred to in Germany as "fictitious self-employment", a term which is legally misleading. A person fictitiously self-employed is in fact an employee; his or her status can be determined by the courts. With regard to these so-called "employee-like persons" the German Collective Agreement Act contains a provision stipulating that its provisions are applicable to individuals who are economically dependent and require similar social protection to that of employees (employee-like persons), if they work on the basis of service or work contracts for others, if they render the services themselves and by and large without the assistance of employees, and if they (a) work mainly for one person, or (b) receive on average more than half of their total occupational remuneration from one person. The same applies in the case of job contracting or a subcontracting relationship. Such workers, without formally being employees of the user enterprise, can nevertheless be considered as such under the Works Constitution Act if they are integrated in the enterprise and its work processes. In the case of labour leasing arrangements the question of self-employment does not arise; leased workers are — as the name indicates — always employees of the leasing agency. This is without prejudice to the fact that German legislation provides that the user company has to treat them as employees if certain provisions are violated.

German Union of Salaried Employees (DAG): The DAG emphatically supports the planned international regulation of "contract labour". However, as soon becomes clear, the difficulties start with the very scope of the definition of "contract labour". Nevertheless, the DAG's response to Questions 1, 2(c), 3, 4, 6(1), 7 and 8 is "Yes". In view of time constraints, it was not able to arrive at a final position on the remaining items. Consequently, the DAG representative will present the Union's standpoint at the 1997 and 1998 Sessions of the Conference. However, it wishes to seize this opportunity to state that the problem of "fictitious self-employment" — at present very topical in the German legal system — should be prepared and formally introduced into the discussion. The increasing circumvention of labour and social law under this pretence gives rise to major practical problems.

Italy. CONFINDUSTRIA: This type of labour is prohibited in Italy. However, employers believe that the labour market needs a certain flexibility, on the understanding that this should not be to the detriment of workers' rights but to the advantage of enterprises (including small and medium-sized enterprises) as well as of workers who lose their job and are looking for new employment opportunities.

Japan. At a time of high unemployment, when there is an increase in the proportion of older and women workers and a change of preference in the younger generation, as well as a trend toward increasing flexibility and specialization of production, economic globalization and a resultant intensification of international competition, it is opportune that the ILO has decided to discuss the problems posed by the employment of labour on the basis of atypical contracts. However, a number of points should be taken into account. As regards "contract workers", the actual situation and legislation are different in each member State, which raises a definitional problem. Accordingly, the protection to be extended to workers other than those recruited on the basis of a normal employment contract, which has been the object of protection under labour laws so far, should be determined by the actual circumstances of each State. Moreover, in many member States many "atypical" workers may for all practical purposes come under the "normal worker" category, even though strictly speaking they do not have a normal employment contract. Therefore, rather than follow the Office's proposal to adopt a new, uniform concept of "contract worker", along with special protection provisions for these workers, it would be preferable for each member State to adopt measures in accordance with its actual circumstances. In particular, the new concept may in some countries overlap with existing definitions and cause confusion between "contract worker" and "employed worker", and between "contract worker" and "self-employed worker". Care should also be taken to avoid duplication with the instruments on home work that were adopted at the 83rd Session of the International Labour Conference. The 85th Session of the International Labour Conference should therefore make a thorough and prudent examination of the circumstances of workers not employed under normal contracts and of the proper response to the problem. It is not appropriate to adopt any international instrument at this stage, save possibly as a guideline for the formulation and implementation of national policies based on the specific characteristics of each country. In order to allow for any future changes in the field of contract labour, any instrument that is adopted should be realistic and flexible and confine itself to the necessary minimum.

Japan Federation of Employers' Associations (NIKKEIREN): Although an international exchange of views on contract labour will help to improve working conditions and secure a stable livelihood for contract workers, it appears premature to adopt an international instrument on this issue. Were one however to be adopted, its form and content should be flexible so as to apply to the different situations of member States. It should also take into account the fact that contract workers are analogous to self-employed as well as ordinary employees. The instrument should also avoid duplication with the instruments concerning home work adopted at the 83rd Session of the International Labour Conference.

Japan Trade Union Confederation (JTUC-RENGO): JTUC-RENGO supports the adoption of an international instrument on contract labour which is becoming a global issue. There are, however, problems which require more careful consideration. First, there are workers who are called "contract workers" but who are in practice doing the same work as regular employed workers. These people ought to be treated under regular labour laws. The concern is that, if new standards are set, they may be treated according to lower standards. In addition, the definition of contract labour must be more adaptable to reality in order to strengthen the protection of workers. The guarantee of the rights and protection of contract workers and the responsibility of subcontractors and brokers need to be set out more concretely and in greater detail.

National Confederation of Trade Unions (ZENROREN): Temporary work agencies should not be excluded from the scope of contract labour instrument(s). Direct regular employment relationships should be regarded as a rule, while contract labour can be used only exceptionally. Public administrations contracting out public services should be included in the definition of "user enterprise".

Netherlands. Federation of Netherlands Industry and Employers (VNO-NCW): Contract labour is an immensely difficult and complex issue which is addressed in different ways in different legal systems. The tests for determining whether or not workers engaged under contract should be treated as employees vary widely from country to country, and the different terms involved (e.g. subcontractors) mean different things in different countries. Any Convention will founder on definitional issues, which are even more complex than in the case of home work. Furthermore, contract labour is an important source of labour market flexibility and attempts to regulate it will diminish employment opportunities. The Employers' group in the Governing Body agreed that contract labour might be one of the agenda items for the International Labour Conference in 1997, but at the same time it has clearly stated that on principle and for practical reasons it is firmly opposed to a Convention on the subject. To ensure a meaningful future role for the ILO in preserving social justice and fundamental social rights, the Employers' group in the Governing Body has for the last four to five years strongly insisted on a drastic reform of the ILO and its activities. If the ILO continues to discuss Conventions on such issues as part-time work, home work and contract labour, the best it can expect is the adoption of these Conventions by the Conference but certainly not their ratification by an important number of Members, which consider such Conventions a risk in a radically changing world, fighting for economic survival, employment and social welfare. As the VNO-NCW understands the intentions of the Employers' group of the Governing Body, it is not prepared to cooperate with governments and workers in this wrong direction for the ILO. The VNO-NCW fully supports this position and will do everything during the 1997 Conference to prevent a Convention on contract labour being adopted. As regards the relationship between subjects covered by the revision of Convention No. 96 and contract labour, the VNO-NCW strongly supports the suggestion of the Office in Report VI (1) to separate these two discussions.

Netherlands Trade Union Confederation (FNV), National Federation of Christian Trade Unions (CNV), Central Union for Intermediate and Higher Level Employees (MHP): The FNV, CNV and MHP fully support the preparation of an international instrument on contract labour. One of the most crucial and essential tasks for the ILO in this period of rapid changes in labour relations is to keep up to date with any tendency to replace the protection and security of workers with "normal" employment contracts by "would-be" forms of so-called self-employment and/or other types of "commercial" contractual relations that in fact and substance do not essentially differ from employment relationships. It is this important discussion that was held during the International Labour Conference in 1995 and 1996 on home work, resulting in a Convention on home work. To a lesser extent, but also providing a partial preparation as far as the concept of equal treatment is concerned, the Part-Time Work Convention, 1994 (No. 175), also dealt with so-called "atypical" forms of work which are becoming more and more "typical" and dominant throughout the world. As the debate especially in the second year of the discussion on home work has shown, the Employers' group opposes this standard-setting activity of the ILO in a very vigorous manner; the attempt to create a clear distinction between commercial and employment relationships — in other words, between autonomous, self-reliant entrepreneurs and those workers who do not have an employment contract but in fact work under the same (or even worse and much more insecure) dependent conditions as employees — will meet the same response from the employers' side with respect to this new contract labour instrument. This should not prevent us from pursuing the road that has been taken to make international standards apply to "new" and precarious forms of labour. The Dutch workers' organizations thus strongly support the designing of a Convention and Recommendation on the subject that will cover many forms of — now or in the future — insufficiently protected labour. The instrument should be broad and should contain general principles and guidelines that do not rigidly prescribe only one way of dealing with the general provisions but should challenge governments to implement those provisions in a manner that is consistent with their national law and practice. In the meantime it should serve the purpose of international convergence and bring us further along the road towards devising and reinforcing universal principles in the field of contractual law, a complicated but nevertheless challenging and worthwhile project.

There is some fear of confusion about the respective scope and aims of the proposed revision of Convention No. 96 and the instrument(s) on contract labour. One of the main reasons for the revision of Convention No. 96 is to extend its coverage to temporary work agencies (TWAs). FNV, CNV and MHP are supporting this intention strongly. Meanwhile, it should be noted that TWAs do supply contract labour in the sense of question 5 of the questionnaire on contract labour (notwithstanding the note of the Office to paragraph (4) of this question), in that a TWA either employs the worker as a subcontractor (for labour-only services to third-users) or acts as an intermediary between the user enterprise and the worker. In this context the Dutch trade unions are of the opinion that the legal status of the relationship between a TWA and the worker is not every time and everywhere without substantial uncertainties. There is, for instance, no common judicial and professional understanding in the Netherlands as to whether this relationship has to be considered an employment contract, at least during periods of work for a user enterprise. As regards the termination of actual employment by the user enterprise and intermittent periods of unemployment, contractual provisions leave the worker without any real entitlements vis-à-vis the TWA. The Foundation of Labour (the national joint consultation forum of trade unions and employers' organizations) only recently reached an agreement in their report to the Government on flexibility and security (3 April 1996) to the effect that legal provisions should govern the relationship between a TWA and a worker; the Government has declared that it will implement this agreement in a Bill. Therefore, the Dutch trade unions are of the opinion that TWA workers should also be covered by the instrument(s) on contract labour, as they have to be categorized as workers in an atypical relationship whose legal status may be as diffuse as that of other contract workers. Though it is understood that there would be an overlap between the revision of Convention No. 96 and an instrument or instruments on contract labour, this should be accepted for several reasons. First, the revision of Convention No. 96 is a single-discussion item, while contract labour will be examined according to the double-discussion procedure. Therefore, after the revision of Convention No. 96, the Conference should take care that an instrument or instruments on contract labour do not include provisions inconsistent with those of Convention No. 96. Secondly, assuming that each instrument will not automatically imply ratification of the other, they should be such that they can stand on themselves and be complete and adequate individually.

New Zealand. The New Zealand Government opposes the adoption of a new instrument concerning contract labour. New Zealand law distinguishes between a "contract of service" and a "contract for services". A contract of service is a relationship of employment and is governed by employment law. A contract for services is a relationship between two independent parties, whose rights and obligations are determined by the general law of contract. Efforts to regulate the relationship between parties contracting for services, or between parties who do not have any direct contractual relationship at all, would inevitably have an impact on the freedom of such parties to negotiate contractual or other arrangements best meeting their needs. In agreeing to enter into a contract of service or a contract for services, parties make a decision which involves taking into account the different legal issues, such as the legal status of independent contractors.

New Zealand Employers' Federation (NZEF): The nature of the contract is a matter for contracting parties to decide and any attempt to predetermine the issue (such as the proposed instrument(s)) would only interfere with long-accepted contractual rights. Should the nature of the contract be subsequently disputed, the Employment Tribunal or Employment Court has jurisdiction to determine the issue.

The New Zealand Council of Trade Unions (NZCTU): In New Zealand law it is relatively easy for an employer to turn an employment relationship based on collective agreement into one based on individualized contracts of service, and then to convert those into contracts for service when the relationship is essentially an employment rather than a commercial one. A key to the process of subverting basic protection by moving to contracts for service is the ability of an employer to bypass the representative of the employee when negotiating for a contract of service. A major difficulty in subcontracting for work or service is that, while the user enterprise sits in a position of power, influence and direct control over the subcontractor and the workers concerned, there are no easily identifiable or enforceable legal obligations between the user enterprise and the workers or their union. There is no employment relationship formally established between these workers and the user enterprise, and thus no obligations of bargaining, fair dealing, information disclosure, consultation, and so on. In subcontracting for labour supply, it is likely that workers will be under the direct control of the user enterprise. There are obvious similarities with the situation of subcontracting for work or services as described above. Workers in these situations become, in effect, the "servants of two masters". In many instances of subcontracting for labour supply the trade unions' ability to monitor workers labouring under this sort of arrangement is minimal or does not exist at all. There is no right to representation, nor is there a right to collective bargaining. No other government agency is monitoring workers involved in contract for services. A fallacious distinction has thus developed between a commercial relationship between two equal parties, and a relationship that is inherently one of subordination and inequity needing the protection of a minimum code and an ILO instrument(s).

Singapore. A clear practical definition of "contract worker" has to be formulated to have a meaningful discussion on this subject. While the number of persons employed in contract work makes up only a small percentage of Singapore's total workforce, nevertheless there is an increasing number of persons taking on contracting jobs either as contractors/subcontractors or contract workers. A distinction must be made between the two forms. In the case of contractors/subcontractors who usually enter in a contract for service with the user enterprise, there is actually no employer-employee relationship. On the other hand, an employer-employee relationship can be identified in the case of contract workers who enter into a contract of service with a labour supply agency or user enterprise. Therefore, contract workers who enter into a contract of service with a contractor, labour supply agency or user enterprise are protected by the same legislation as applies to workers under a normal employment contract. As regards the need to extend the protection of labour laws to contractors where an employer-employee relationship does not exist, the Singapore Government is of the view that this would depend on whether the workers have the choice to decide on a direct employment relationship or providing a service under a contract. The economic situation and employment level in a country may influence this choice. For example, in a tight labour market situation where jobs are abundant, workers who enter into labour market contracting arrangements probably see greater benefits in entering into such work arrangements. A major attraction would be the flexibility in working hours and higher take-home pay. Another advantage is that these workers can engage other workers to provide the goods and services to the principal contractor and thus fulfil the aspiration to be entrepreneurs. For this category of contract workers, the protection of working time and other conditions of work may not be relevant to them.

Sweden. (Reply reflecting the joint views of the Government and the most representative workers' organizations as expressed in the Swedish tripartite ILO Committee:) Contract labour is a problem of urgent relevance, but one which has been very little analysed and is very hard to regulate even at the national level. Swedish law contains three provisions on that subject. The Co-Determination Act, 1976, states that "a person doing work for another without being employed by that person but whose position is essentially of the same kind as that of an employee shall be deemed an employee. In such a case, the person on whose behalf the work is done shall be deemed an employer" (section 1). Contractors who are greatly dependent, in an organizational sense, on the client are probably very often to be regarded as the client's employees. On the other hand, contractors who are economically but not organizationally dependent on the client are not normally to be regarded as employees. The contracting out of manpower is defined in the Act on private employment exchange and the hiring out of manpower, 1993, which lays down that "the hiring out of manpower implies a legal relationship between a principal employer and another employer, the purpose of which is that the latter places his employees at the principal employer's disposal at an agreed price", from which it is clear that the provider of personnel is to be regarded as an employer (section 2). At the same time the client, who exercises the direct supervision of the employees and allocates work, incurs in certain respects the responsibilities of an employer. These responsibilities are defined in the Work Environment Act, 1977, which envisages that "the person controlling a worksite shall ensure the existence at the worksite of permanent devices of such a kind that a person working there without being an employee in relation to him is not exposed to the risk of ill health or accident. He shall also ensure that other devices at the worksite can be used without any such risk" (Chapter 3, section 12).

In discussing whether it is possible and practical to draw up a separate ILO instrument on contract labour, a distinction should be made between two different, fundamental questions: (i) the concept of "employee"; (ii) the apportionment of employer's responsibility in situations where, *de facto*, there is a triangular relationship, in the sense of the worker having two different parties with whom he/she will in one way or another be dealing when the work is done or its conditions are set. As regards the prevailing concept of "employee", Sweden does not appear to have any plans for narrowing it down and recognizing an intermediate form between employee and self-employed person. If a bid of this kind is deemed appropriate, it ought primarily to be accomplished through national measures and as a result of national deliberations. An ILO instrument can define certain minimum requirements, but it should be constructed so as to be capable of operating in a variety of legal environments with a variety of employee concepts. In so far as the way in which the employer's responsibility is to be allocated in a situation where the employer functions are exercised by two or more persons, it should be assumed that different powers and obligations can devolve on different parties and that those performing work can, *de facto*, have simultaneously two or more employers. This can only be made to vary according to the structure of the contract in each individual case. The basic principle should be for powers and responsibilities to go together and for the primary employer responsibility to devolve on the person in whom such powers are vested.

An ILO instrument should therefore be based on, and respect, the contractual arrangements occurring in business life and devolving in practice. The task of such an instrument should be to ensure that new arrangements do not emasculate or erode employer responsibilities. It can be accomplished through a code laying down the principles of allocation of employer responsibilities and should be somewhat differently regulated for different types of conditions of service, dealing separately with each of them. One important point of departure, however, is that such responsibilities should be flexibly placed, in a manner which is appropriate but at the same time predictable. An instrument of this kind would be of value from a Swedish viewpoint. It will provide international normative support for a functional and realistic apportionment of employer responsibilities in complicated contractual situations where foreign parties may also be involved. With reference to the information and the argument of principle presented here, Sweden refrains from replying to the questionnaire.

Swedish Employers' Confederation (SAF): In view of the unattainability of a serviceable definition of contract labour, the SAF sees no possibility of introducing an ILO instrument on the subject. It is inappropriate to regulate the concept of "employee" in an international instrument, in view of the diversity of contracts and the large number of factors influencing the definition of "employee". The allocation of employer responsibilities between various conceivable employers is inappropriate too, in view of the many different special situations which may occur. Besides, an ILO instrument on the subject, if adopted, will also have negative effects on employment, since it would contain a large number of protective rules for contract labour, imposing far-reaching responsibilities on the person engaging such labour. Contract labour would then acquire a position approaching that of an ordinary employer-employee relationship, whereas there is a great need for more flexible labour contracts and forms of hiring, from both the economic and the social point of view. Report VI (1) contemplates a detailed Convention of the traditional ILO kind, leading to a perpetuation of prevailing structures. Instead, the ILO ought to be concerned with promoting commercial activity, economic growth and greater employment.

Switzerland. Swiss Machines Industry Association (ASM), Convention of Employers of the Watch Industry (CP), Association of Swiss Garments Industry (Swissfashion): The growing importance of contract labour is due to the fact that it contributes to efficiency, competitiveness and job security. These are the purposes for which this form of labour is used in Switzerland; it is not used for the purpose of avoiding obligations under labour and social security laws. In certain spheres of economic activity, e.g. watch production, not only has the "peripheral" work (e.g. cleaning of premises) been widely contracted out but principal activities of enterprises as well ("*terminage*"). This significantly contributes to the development of small and medium-sized businesses, whose economic and social importance for any country can hardly be overestimated. Such freedom of economic activity should not be endangered by an international instrument.

Central Union of Swiss Employers' Associations (UCAPS): An international legal instrument on this subject is not desirable.

Federation of Swiss Societies of Salaried Employees (VSA): VSA supports the ILO initiative to examine the question of "contract labour". The increasing numbers of "atypical employment relationship", whose legal classification generates serious problems, places many workers in an unacceptable situation. Forms of work, which must be described as "fictitious self-employment" and which provide workers with less security in their employment relationship, are often imposed by employers as the only alternative to unemployment. A binding international instrument would therefore contribute to the establishment of uniform clear solutions to these and other atypical forms of employment and to ensuring protection of workers in such situations.

United Kingdom. General Council of the Trades Union Congress (TUC): The TUC attaches great importance to the elaboration and adoption by the ILO of a Convention on contract labour. At a time when globalization and casualization are two of the most serious challenges facing working people worldwide, and when contract workers are facing employment insecurity and lack of employment protection, the need to establish international minimum standards to protect contract workers is increasingly apparent. A Convention on contract labour, following those on part-time work and home work, will provide a framework for protection of those in atypical employment relationships and will show that the ILO is capable of keeping pace with the rapidly changing labour market as it continues to promote its core mandate of protecting working people through its core means of action — international labour standards.

The General observations have underlined the diversity and complexity of the subject under consideration, already referred to in Report VI (1), as well as the divergency of opinions as regards the possibility and desirability of legislating internationally on contract labour.

Although the points raised in these observations are taken up as appropriate under the relevant specific questions, the Office would also like to make some general comments as a reaction to the above observations.

In the first instance, it is to be borne in mind that the initiative to launch a standard-setting exercise on contract labour was originally generated within the Governing Body itself and the decision to put this technical item on the agenda of the 85th Session of the International Labour Conference in 1997 was taken by the April 1995 Session of the Governing Body on the basis of a tripartite consensus.

Secondly, various forms of work utilization outside the purview of a traditional pattern of employment relationship, i.e. through contractual arrangements other than contracts of employment, are increasingly practised worldwide — a sign of the growing flexibility and mobility of labour markets, which are widely recognized as contributions to economic development and job creation. Among these different "non-employment" forms of labour, specific relationships of dependency and/or subordination between the workers and the enterprises making use of their labour (referred to as "user enterprises") may emerge with no contract of employment formally established between them. Although demonstrating characteristics similar to those of an employment relationship, which are, however, not sufficient in most countries to allow the relationship to be so qualified, such relationships leave the workers concerned outside the protection rendered by labour and social security laws to those who are in a formally established employment relationship, i.e. who are "employees". This specific type of relationship has been identified as "contract labour".

Thirdly, in many countries worldwide, in order to keep pace with the growing dynamism of labour markets, national law and practice have developed different instruments to provide such dependent and/or subordinated "non-employees" with necessary protection. Both this report and the Proposed Conclusions have been developed by the Office on the basis of these national laws and practices and in keeping with the following general principles:

(a) the subject-matter of possible international instruments(s) should be confined only to those who work under conditions of dependency on and/or subordination to the enterprises similar in nature to those that characterize an employment relationship under the national law and practice of each individual country, but without these conditions being deemed by national law to be sufficient for the workers concerned to be conferred a formal "employee" status vis-à-vis these enterprises;

(b) all other "non-employment" type contractual relationships, including those implying conditions of dependency and/or subordination different in nature from those recognized by national law and practice as characteristic of an employment relationship, should be left outside the coverage of possible international standard(s);

(c) contractual rights and freedoms under national commercial law and practice of each individual country should be fully respected;

(d) possible instrument(s) should be targeted at eliminating abuses in this specific area of labour market activity and providing the workers concerned with the necessary protection;

(e) such protection should be afforded in a way allowing the maintenance of the economic and job-creation potential of "non-employment" forms of labour market activity;

(f) in order to be widely applicable, possible instrument(s) should be developed in a sufficiently flexible way, taking account of particularities of different legal systems.

I. Form of the international instrument or instruments

Should the International Labour Conference adopt an instrument or instruments concerning contract labour? **Qu. 1**

Total number of replies: 84.

Affirmative: 74. Angola, Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mali, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, United States, Uruguay, Yemen, Zimbabwe.

Negative: 7. Australia, Bangladesh, Germany, Japan, New Zealand, Norway, United Kingdom.

Other: 3. Belgium, Singapore, Sweden

Australia. No. Given the wide variety of conditions and circumstances under which contract labour is carried out and the fact that, in Australia, contractors are predominantly not employees, Australia does not consider that contract labour is a suitable subject for regulation by an international instrument or instruments. An ILO instrument that deals with matters outside the direct employment relationship would also be inconsistent with current Australian law and practice and with the Government's policy of reducing the regulatory burden on business.

Austria. BAK: Yes.

Bangladesh. No. In a labour supply economy, especially in the developing countries, further regulation of contract labour by adopting international instrument(s) world have a negative impact on the fragile labour market.

Barbados. Barbados Employers' Confederation (BEC): No. The existing laws that govern contractual arrangements and the intentions of the parties to contractual arrangements are sufficient to ensure that there are equitable arrangements between the parties.

Belgium. The Government of Belgium can support the adoption of a Convention supplemented by a Recommendation, provided: (i) that a clear distinction is drawn between the two legal meanings of subcontracting that have been presented under the *General observations*; (ii) that a Convention is limited to broad principles, and more especially the basic rights of the workers; (iii) that the special measures aimed at combating abuses are dealt with in the Recommendation. A final position on the form of the instrument or instruments will therefore be taken only after the Office has made a concrete proposal.

CNT: The Council reserves its position on this point until the Office, on the basis of the first discussion by the Conference, has established proposals relating the content of the envisaged instrument.

Brazil. National Confederation of Agriculture (CNA): Yes.
National Confederation of Commerce (CNC): No.

Canada. Canadian Employers' Council (CEC): The topic is one that defies international standard-setting until the subject is defined more accurately. It is difficult at the present time to develop an international instrument that would be implemented by the majority of Members as the subject is too complex. This would mean that the ILO is trying to catch up with labour market changes rather than leading the process of finding solutions to make the labour markets function more efficiently for both workers and employers. As employers, the CEC has deep reservations about regulations that would impede business opportunities, economic progress and efficiencies such as these. There is much work and study going on of the workplace of the future and the CEC strongly suggests that a more accurate picture of this workplace is needed before international standards can be developed that apply specifically to contract labour. The CEC is currently researching these studies with a view to developing a basis for taking positions on several issues that involve work arrangements. The CEC contemplates providing their analysis and positions in a paper that should be available by the year's end.

Costa Rica. Yes. It is important to bear in mind that one of the main objectives of the ILO is to ensure the effective protection of labour rights. The pertinent regulations must be established for the prevention of abuses, particularly since contract labour offers many opportunities for such abuse.

Costa Rican Chambers and Associations of Private Enterprise (UCCAEP): No.

Czech Republic. Czech-Moravian Chamber of Trade Unions (CMK-OS): A Convention supplemented by a Recommendation.

Denmark. There may be a special need for protection of contract workers, but in that case it must be protection which supplements the protection which already applies to employees in the traditional sense.

Danish Employers' Confederation (DA): No, since the problems taken up in Report VI (1) are too complex and far-reaching.

Danish Confederation of Trade Unions (LO): Yes. A Convention should ensure that contract workers have rights and obligations which do not place them in a less favourable situation than other groups of employees and pay and working conditions that are based on collective agreement.

Danish Confederation of Professional Associations (AC), Federation of Public Servants' and Salaried Employees' Organizations (FTF): Yes.

Estonia. Confederation of Estonian Industry and Employers (CEIE), Estonian Confederation of Employers' Unions (ECEU): Yes.

Association of Estonian Trade Unions (AETU): Yes.

Finland. Yes, but the Convention should be very flexible by nature and supplemented by a Recommendation.

Confederation of Finnish Industry and Employers (TT), Employers' Confederation of Service Industries (LTK), Federation of Finnish Enterprises (FFE): Neither a Convention nor a Recommendation should be adopted, as the issue is too complex to be regulated by ILO instruments. The very concept of "contract labour" as described in Report VI (1) is problematic and not feasible as a definition. There is an increasing awareness of the need to lower the threshold for job creation, whereas further regulation will increase unemployment. Attempts to introduce further regulation should therefore be abandoned. Work performed under a contract relationship other than an employment relationship should not be tightly regulated; freedom of contract should apply.

Central Organization of Finnish Trade Unions (SAK), Finnish Confederation of Salaried Employees (STTK), Confederation of Unions for Academic Professionals (AKAVA): Yes. Over the past few decades labour markets have become increasingly complex and diversified. Alongside regular employment relationships, "atypical" forms of employment are becoming increasingly common. As a result, conventional forms of regulation are not quite suited to these situations. Employees involved in various atypical forms of employment are, in many ways, a vulnerable category, in that they often lack the basic security of a regular employment relationship. It is not always easy to make a clear distinction between an employment relationship and a commercial relationship. Abuses and deliberate "disguising of facts" are a widespread practice.

Germany. In the light of the above-mentioned general reservation regarding the planned contents of an instrument considered by Germany to be too broad or general in nature, our answer to this question must be "No". At the most, only a Recommendation should be considered. The replies below to the remaining questions are given only as a precaution. They must not be interpreted to mean that the federal Government would be able to vote in favour of adoption of an instrument — in particular a Convention — even if all of its suggestions in the replies to Questions 2-24 were to be followed.

BDA: No.

DGB: Yes.

Ghana. Trades Union Congress (TUC): Yes.

Greece. Yes. The fact that (i) there is no full and generally accepted definition of "contract labour", (ii) legislation of certain countries on the subject is insufficiently developed, (iii) different countries legislate differently on the subject, and (iv) it is necessary to protect contract workers, argues in favour of regulating this question by means of ILO international instruments. The instruments should be flexible enough to permit ratification by as many Members as possible.

General Confederation of Greek Workers (GCGW): Yes.

Iraq. General Federation of Trade Unions (GFTU): Yes.

Israel. General Federation of Labour (Histadrut): Yes.

Italy. CONFINDUSTRIA: Yes.

Japan. NIKKEIREN: If an international instrument is adopted, it should take the form of a Recommendation.

JTUC-RENGO, ZENROREN: Yes.

Jordan. Federation of Jordanian Chambers of Commerce (FJ), Amman Chamber of Industry (ACI): Yes.

General Federation of Jordanian Trade Unions (GFJTU): Yes.

Netherlands. Yes, providing there is no obligation to introduce a new legal concept alongside the existing legal concept of "employee". Furthermore, the precise proposals concerning the various elements must be absolutely clear. The relation between Convention No. 96 and the recently adopted instruments on home work are important.

VNO-NCW: No. A Convention could have negative effects for the economy and job creation. The VNO-NCW could cooperate in a discussion of a Recommendation, but only if new and modern guidelines are devised for all or most of the ILO's Members, irrespective of their legal systems.

FNV, CNV, MHP: Yes. The instrument(s) should not force Members to introduce in their legal order new species of labour relationship alongside the employment contract. It is understood that the concept of "labour contract" does not refer to any specific type of contract. It has been considered a container of labour market phenomena which have in common their atypical character compared with the standard employment contract, in that the worker is — unlike a real commercial relationship — in a condition of substantial economic dependency on the user enterprise, without, however, being formally an employee of that enterprise.

New Zealand. NZEF: No.

NZCTU: Yes.

Norway. No. There are several difficulties in putting forward a proposal on an instrument on contract labour, as many countries will not be able to adopt it. If the ILO does propose an instrument on the subject, it should be flexible in nature.

Confederation of Norwegian Business and Industry (NHO): No.

Confederation of Trade Unions in Norway (LO): Yes.

Poland. Independent Self-Governing Trade Union (Solidarnosc): Yes.

Portugal. Yes. Given the variety of forms in which work is performed as a result of the economic and social crisis of the last 15 years and the trend towards deregulation which the adoption of these forms of work outside the classic structure of a contract of subordinate or dependent work is imposing, there is a need to take measures to provide adequate protection to workers and at the same time to avoid unfair competition between enterprises. However, such measures must not pose an obstacle to the need or attempts to modernize forms and processes of production, organization and management of enterprises.

Confederation of Portuguese Industry (CIP): The adoption of any instrument is not supported.

General Confederation of Portuguese Workers (CGTP-IN), General Union of Workers (UGT): Views similar to those of the Government were expressed.

Rwanda. Confederation of Trade Unions of Rwanda (CESTRAR): Yes.

Singapore. While the Singapore Government recognize that workers involved in contract labour need to be protected, it is of the view that there is no necessity to have a Convention devoted to contract labour for the following reasons: (i) if benefits such as hours of work, leave and maternity protection, which are traditionally applicable to employees, are extended to contractors, it would blur the distinction between a contract for service and a contract of service; this could stifle market efficiency; (ii) with diverse levels of economic growth and employment among ILO Members, it might be difficult to adopt standards that are universal to all; under such circumstances, it might be best that workers in countries with a sound industrial-relations climate and low unemployment levels be given the freedom of choice to provide service under a contract for service without an employer-employee relationship or to provide service under a contract of service, with the accompanying terms and conditions protected under the employment laws of the Member; (iii) the possibility of legislative intervention as regards the type of work that can be contracted out is too restrictive and would impede an employer's right to manage his organization in the most effective way; (iv) an international instrument on the subject may introduce new rigidities into the labour market which can only increase costs in one form or another and restrict personal choices.

Spain. Yes, excluding temporary work enterprises.
General Union of Workers (UGT): Yes.

South Africa. Business South Africa (BSA): BSA does not support the adoption of an instrument or instruments on the subject. Current South African law provides for adequate mechanisms to determine whether a firm or an individual is an independent contractor or not. Should such a firm or individual not be an independent contractor, then the firm and its employees, or the individual, will be employees of the user of the contract labour; the latter, as employer, will be responsible for applying all the relevant labour legislation, rules and regulations.

Sweden. See *General observations.*

Switzerland. ASM, CP: No.
Swissfashion: At most a Recommendation.
Swiss Confederation of Christian Trade Unions (CSC/CNG): Yes.
Federation of Swiss Societies of Salaried Employees (VSA): Yes.

Turkey. Confederation of Turkish Employers' Association (TISK): Yes.
Confederation of Turkish Trade Unions (TÜRK-IS), Confederation of Progressive Trade Unions of Turkey (CPTUT): Yes.

United Kingdom. It would be better to revise outmoded instruments instead of adopting new instruments that few Members will ratify.

Confederation of British Industry (CBI): The CBI acknowledges that the labour market is increasingly made up of a workforce which is diverse in its nature. In many respects, this is seen as an inevitable and positive development. However, it is equally important not to confuse the essentially close relationship between employer and employee and the rights and responsibilities which attach thereto with the rather different relationship between a contractor who provides services and the user of such services. In this regard, the CBI's members are overwhelmingly opposed to any attempt to graft on to the latter relationship any employment nexus. Accordingly, the CBI does not believe an instrument is necessary or desirable.

TUC: Yes.

United States. United States Council for International Business (USCIB): No. An instrument on contract labour would be premature. It would risk the introduction of rigidities that would have the effect of reducing economic growth and increasing unemployment. The United States is undergoing a process of adapting to new economic realities. As more countries benefit from private investment and enter the arena of international competition, already developed economies like that of the United States are compelled to seek ways of maintaining their competitive position. United States firms must improve their productivity if they are to survive. This frequently necessitates changes in the ways in which firms relate to their workers. Some of the changes take the form of downsizing, core-periphery employment structures, outsourcing, etc., all of which may shift work formerly done by employees to work done by contract workers. The extent to which these changes have occurred has been greatly exaggerated in both popular and professional publications. The vast majority of United States workers still have the status of regular employee, with a traditional relationship with the employer for whom they perform work. Where changes have occurred they have been necessary to maintain competitiveness and to ensure greater employment opportunities in the longer run. Even though the extent of conversion from traditional employee status to contract worker has been exaggerated, the impact on individual workers who are "downsized" has great emotional appeal. The change in status is frequently disadvantageous to the individual, and protection in the form of legislation at some level may superficially appear desirable. There is a greater danger, however, that any attempt to provide such protection would be detrimental to the status of workers as a whole. This is because the international competition that gives rise to "downsizing" (to the extent that it occurs) is beneficial. It ultimately creates employment and raises incomes. It enables nearly-industrialized countries to achieve a level of welfare already enjoyed by those countries, like the United States, which can maintain a satisfactory pace of economic growth while absorbing the shocks of increased international competition. If highly developed economies like that of the United States are unable to adapt to these new conditions because of reduced flexibility in labour relations, the process will be slowed or even stopped. The result would be either that United States firms would be unable to compete internationally or that workers, instead of being converted from employees to a non-traditional work status such as contract workers, would be converted from employees to unemployed. Contract labour can and does take many forms. In some cases there is an intermediary, in other cases not. In some cases the contract worker performs work that is the normal business of the firm (who defines "normal"?), in other cases not. In some cases, the regular employees of the firm benefit, in other cases not. The forms are still changing and evolving. This evolution should be permitted to continue naturally in response to market forces so that the maximum number of persons who lose their positions as traditional employees, as a result of the dislocations caused by international competition, can find alternatives to unemployment.

Uruguay. Employer sector: No. Contract labour is a form of working arrangement that is undergoing change throughout the world, making it impossible to distinguish its pros and cons for the moment. That is why the ILO should not envisage drawing up an instrument in this area.

Worker sector: Yes.

The majority of the replies are in the affirmative. The Proposed Conclusions presented at the end of this report have therefore been drafted with a view to the adoption of instruments on the subject (*Point 1* of the Proposed Conclusions).

Qu. 2 *If so, should the instrument or instruments take the form of:*

(a) a Convention?

(b) a Recommendation?

(c) a Convention supplemented by a Recommendation?

Total number of replies: 85

(a) Convention: 15. Bahamas, Cambodia, China, Comoros, Cuba, Estonia, Ethiopia, France, Hungary, Kenya, Nicaragua, Panama, Sri Lanka, Turkey, Yemen

(b) Recommendation: 27. Angola, Argentina, Belarus, Brazil, Bulgaria, Cambodia, Canada, Chad, Costa Rica, Cyprus, Czech Republic, Ghana, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mexico, Myanmar, Oman, Poland, Saudi Arabia, Sudan, Switzerland, Thailand

(c) Convention supplemented by a Recommendation: 34. Austria, Bahrain, Barbados, Benin, Burundi, Cambodia, Colombia, Denmark, Egypt, El Salvador, Finland, Gabon, Greece, Haiti, Mali, Malta, Mauritius, Namibia, Netherlands, Niger, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, Slovakia, South Africa, Spain, Suriname, Swaziland, United Arab Emirates, Uruguay, Zimbabwe

Other: 9. Australia, Belgium, Germany, Japan, New Zealand, Norway, Sweden, United Kingdom, United States

Australia. If an instrument is adopted, the preferred form would be that of a Recommendation, as the area of contract labour is not amenable to the prescriptive definitions and regulation which a Convention would demand. In the past, Australia has found it difficult, and often undesirable, to legislate for the enforcement of detailed obligations upon relationships which are primarily commercial in nature. A Recommendation would also allow guidelines for international best practice to be drawn up without the need for Members either to commit or not to commit themselves to a Convention, which would be binding on Governments following ratification. However, any instrument would need to be flexible enough to enable the adoption of approaches which are appropriate to national law and practice. A Convention on such a topic is unlikely to be successful in that it would receive very few ratifications.

Australian Chamber of Commerce and Industry (ACCI): Contract labour is an immensely difficult and complex issue which is addressed in different countries in different ways. The lack of its conceptual clarity is magnified by the different approaches which have been taken in different legal systems. The test of determining whether or not workers engaged under contract should be treated as employees varies widely from country to country and the different terms involved (e.g. subcontractor) mean different things in different countries. Any international instrument which seeks to address contract labour would have to apply to different legal relationships and legal entities in different countries. Such a varied or differential effect is inconsistent with the very rationale of international labour standards, and highlights the inappropriateness of regulation by Convention in this area.

The application of a Convention would almost certainly differ from country to country, firstly seriously detracting from the objectives of any general instrument and, secondly, potentially placing different obligations upon employers and governments in different countries. In common law countries a distinction is made between a contract of service and a contract for services. The design of the questionnaire reflects the common law approach, and any Convention framed on this basis will create even greater difficulties for countries with a civil law code which are likely to experience even greater difficulties and uncertainties with a definition based on the common law approach. Therefore, profound difficulties will surround the application of *any* general approach in national labour systems. The delineation of labour contract arrangements' employment relationship, on the one hand, and standard commercial contract arrangements, on the other, has been problematic and the subject of a great deal of litigation. A clear delineation at an international and national level will be impossible. The result will be that freedom of commercial contracts is almost certain to be interfered with in some way in any "inexact" Convention. Any Convention will founder on definitional issues, which are even more complex than in the case of home work. As a direct function of these difficulties, meaningful national and international definitions have proven elusive, making adoption, ratification and implementation of a Convention extremely difficult. Moreover, even if it were possible meaningfully to define contract labour arrangements on an international basis, national approaches are evolving so rapidly that any such definitions would at best of very temporary utility. A possible collision between international and domestic usage has the potential to create uncertainty and to discourage the use of contract labour, so diminishing its benefits for the labour market and growth. Attempts to make user enterprises responsible for contract labour as though an employment relationship exists will involve interference with commercial relationships. This has the very real potential of placing commercial entities within the purview of laws which were not designed to regulate them. User enterprises may be required to accept responsibilities for employees of completely separate companies with which they have entered into contracts, thus undermining the very basis of the commercial relationship.

Any Convention will undoubtedly involve issues of licensing, registration, and control of intermediaries of various types and this would be unwarranted, unnecessary and inefficient. It would increase the cost of operation for contractors and the cost to user enterprises, and provide a disincentive to the user of contract arrangements. As a result, employment opportunities in the labour markets will be diminished. The treatment of contract workers as employees will not only increase labour costs for employers, but also lead to confusion in collective bargaining. Labour contracting should be recognized for what it is, a demonstration of the robustness and creativity of labour markets attempting to reach a market clearing equilibrium. Attempts to interfere with and regulate markets through a Convention can only detract from the competitiveness of ratifying countries in domestic and international markets. There is no evidence that contract labour is exploited or disadvantaged to an extent which requires a Convention. Any limited and specific issues can be and are being dealt with by national legislation.

Austria. Care should be taken not to mix up the various forms of contract labour addressed in Report VI (1); a structure comprising several sections should be aimed at, possibly several documents.

BAK: A Convention supplemented by a Recommendation.

Belgium. See reply to question 1.

Brazil. A Recommendation can be adapted more easily to the variety of types of work involved in contract labour in various countries, which are becoming increasingly widespread with the development of new flexible production methods.

CNA: A Convention.

CNC: A Recommendation, if Members decide to regulate the subject by an international instrument.

Canada. The form of the instrument should initially be a Recommendation only. This would ensure flexibility and maximum acceptance, and possibly over time increased support for the development of a Convention. It would appear unlikely at this stage that a Convention on the subject would be widely ratified, given the divergence in practice among countries.

Costa Rica. The instrument should at least take the form of a Recommendation, in order to draw attention to the main aspects of the application — advantages and disadvantages — of this "atypical" system of work. If a Convention is adopted, every effort should be made to include provisions which are clear, specific and easily accessible so that those countries which ratify the instrument can apply it effectively.

UCCAEP: At most a Recommendation.

Denmark. An instrument should be confined to a few fundamental and general rules. It would therefore, in principle, be sufficient to adopt only a Convention. But in order to maintain the special character of a Convention, it might be appropriate to supplement it by a Recommendation.

DA: A Recommendation, in the case of regulation.

LO, AC: A Convention supplemented by a Recommendation.

Estonia. CEIE, ECEU: A Recommendation.

AETU: A Convention supplemented by a Recommendation.

Finland. TT, LTK, FFE: No instrument(s) should be adopted.

SAK, STTK, AKAVA: A Convention supplemented by a Recommendation.

Germany. See under question 1.

DGB: A Convention supplemented by a Recommendation.

Ghana. TUC: A Convention supplemented by a Recommendation.

Greece. GCGW: A Convention supplemented by a Recommendation.

Hungary. Government and trade unions (National Confederation of Hungarian Trade Unions, Democratic League of Independent Trade Unions, National Federation of Autonomous Trade Unions, National Federation of Workers' Councils, Cooperation Forum of Trade Unions, Trade Union Group of Intellectuals): Yes, taking account of the fact that the intention is to provide guarantees for the employed personnel affected, the regulation must be enacted in the form of a Convention. However, the possibility of a uniform solution seems doubtful since the term "contract labour" does not cover a legal relationship. Contract labour means that it can be performed within the framework of several types of legal relationships, and the assessment of these relationships may differ from one country's legal system to another. As a result, the legal status of different categories of contract workers will differ significantly and different problems may arise in relation to the employment of different groups of employees, meaning that it would be purposeful to have different solutions implemented.

Employers' organizations (Union of Agrarian Employees, National Federation of General Consumer Cooperatives, National Association of the Industrial Corporation, National Federation of Traders and Caterers, Federation of Hungarian Industrialists, Hungarian Industrial Association, Hungarian Employers' Association, National Federation of Agricultural Cooperators and Producers, National Association of Entrepreneurs): The instruments should take the form of a Convention, containing a few fundamental provisions, supplemented by a Recommendation.

Iraq. GFTU: A Convention supplemented by a Recommendation.

Israel. Histadrut: A Convention supplemented by a Recommendation. This is the best way of setting standards for governments to follow and thus preserve the basic employer-employee relationship.

Italy. A Recommendation. As regards the other questions, the Italian Government's reply is generally positive. Although this type of work is prohibited in Italy, employers would like to see its introduction which, with due protection of workers' rights, would offer a degree of flexibility in the labour market.

CONFINDUSTRIA: A Recommendation.

Japan. If an instrument is to be adopted, it should solely take the form of a Recommendation. See also *General observations.*

NIKKEEIREN: A Recommendation.

JTUC-RENGO, ZENROREN: A Convention supplemented by a Recommendation.

Jordan. FJCC: A Convention supplemented by a Recommendation.

ACI: A Recommendation.

GFJTU: A Convention supplemented by a Recommendation.

Malaysia. The instrument should take the form of a Recommendation. Malaysia, being a developing country and experiencing a shortage of workers in general, would be unable to endorse a Convention.

Mexico. A Recommendation, without ruling out the possibility of a Convention, provided that the latter contains basic principles and is worded in general terms.

Netherlands. As there is still a lack of clarity concerning content and scope, the Netherlands definitely prefers a Recommendation for the time being.

VNO-NCW: A Recommendation is possible. See reply to question 1.

FNV, CNV, MHP: A Convention supplemented by a Recommendation.

New Zealand. See *General observations*. If an instrument is to be adopted, it should be a Recommendation.

NZCTU: A Convention supplemented by a Recommendation.

Norway. If the ILO adopts an instrument, it should be a Recommendation.

LO: A Convention, or a Convention supplemented by a Recommendation.

Poland. Solidarnosc: A Convention.

Portugal. The Convention should include only fundamental principles to be applied with a view to protecting contract workers, and the Recommendation should indicate the different forms of applying these principles in national law and practice.

Rwanda. A Convention supplemented by a Recommendation.

South Africa. BSA: A Recommendation.

Spain. A Convention supplemented by a Recommendation. However, just a Recommendation could be sufficient for the purpose, combining a wide-ranging content with the necessary flexibility for adaptation by Members.
UGT: A Convention.

Sweden. See *General observations.*

Switzerland. A normative action in this field might generate insurmountable problems, since the subject is a border case between commercial and labour legislation, and is treated differently in different countries and branches of economic activities. A Recommendation, which should be as flexible as possible, could overcome such problems and would provide Members with guidelines for protecting the workers concerned. This would also be more useful for the purposes of avoiding overlaps with the revision of Convention No. 96.
ASM, CP: If the ILO adopts an instrument, it should be a Recommendation.
CSC/CNG, VSA: A Convention supplemented by a Recommendation.

Turkey. TISK: A Recommendation.
TÜRK-IS: A Convention.
CPTUT: A Convention supplemented by a Recommendation.

United Kingdom. If there were to be an instrument it should be limited to a Recommendation.
CBI: If there were to be an instrument, it would be preferable to limit it to a Recommendation. It must be reiterated, however, that the CBI does not believe any form of instrument could be appropriate in this area.
TUC: A Convention supplemented by a Recommendation.

United States. At this stage, the choice of a form of instrument(s) would be premature. The United States Government would support the development of an instrument or instruments that would contain worker protection for the workers concerned, as well as provide member States with sufficient flexibility to allow for different circumstances.
USCIB: If an instrument is adopted, it should be in the form of a Recommendation only. Its terms should be general. It should not reduce the opportunity for workers who lose their status as traditional employees to become contract workers rather than unemployed.
American Federation of Labour — Congress of Industrial Organizations (AFL-CIO): The AFL-CIO strongly supports the adoption of a Convention supplemented by a Recommendation. For some time now, there has been widespread recognition within the United States of the need to regulate the "non-standard" employment relationships now increasingly typifying the economy. Throughout all sectors, but particularly in the service sector, business enterprises are restructuring and shedding employees. Increasingly, as Secretary Reich has written, large enterprises are reorganizing into smaller core operations conducted by fewer, often highly paid employees surrounded by networks of contractors, or independent contractors at the periphery whose tenure and status is marginal. All too often, workers fall outside the framework of labour standards. At other times, workers remain formally within the standard labour law regime but for all practical purposes function without the benefits of the regime because their employers are lacking in resources or in the ability to carry out their duties meaningfully without the consent of other enterprises which are not considered their employers for purposes of the labour laws. These trends were fully analysed in the work of the Commission on the Future of Worker-Management Relations.

Uruguay. Worker sector: A Convention.

The majority of replies favoured a Convention supplemented by a Recommendation or a Convention alone, while a significant number of governments favoured a Recommendation alone. In these circumstances, the Proposed Conclusions have been drafted in the form of a Convention supplemented by a Recommendation (*Point 2*).

A number of replies to this or other questions have emphasized that the proposed instruments should be drafted in a flexible manner, to take into account the considerable diversity in the way the basic principles are applied in different countries. Some other replies have expressed the view that the draft instrument or instruments should focus on basic principles and avoid matters of detail, or that matters of detail should be left to the Recommendation. The Office has sought to draft the Proposed Conclusions in as flexible a way as possible so as to leave considerable latitude to governments to implement the principles contained therein in accordance with national circumstances, while keeping matters of detail in the Recommendation.

I. Preamble

Should the Preamble to the instrument or instruments recognize that, having regard to the growing importance of contract labour, it would be appropriate to adopt new standards on the subject with a view to providing the workers concerned with adequate protection? **Qu. 3**

Total number of replies: 78.

Affirmative: 73. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, Colombia, Comoros, Costa Rica, Cyprus, Cuba, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Indonesia, Italy, Japan, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mali, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, United States, Uruguay, Yemen, Zimbabwe.

Negative: 1. Australia.

Other: 4. Germany, Hungary, Switzerland, United Kingdom.

Australia. No. The Preamble could refer to the desirability of encouraging parties to conclude contracts in a manner that is consistent with the rights of workers. The Preamble may also refer to relevant standards set by other ILO instruments.

Austria. Yes, it is essential for persons requiring similar protection to that of workers to be covered by the Convention. Instead of the word "worker" (*Arbeitnehmer*), the term "worker employed under contract/contract worker" (*unselbständiger Vertragsarbeiter*), or some similar term, should be used; the text is intended not just to cover workers in general but persons who, by virtue of their dependency upon the user enterprise, require the same protection as workers.

BAK: Yes.

Brazil. The Preamble should also refer to other ILO Conventions and Recommendations on matters related to the subject of the new instrument.

CNA: Yes.

Costa Rica. UCCAEP: The instrument, if adopted, should prevent contract labour from becoming a subterfuge by the user enterprise to avoid the responsibilities imposed by legislation with respect to wage workers.

Czech Republic. Union of Industry and Transport (SPD-ČR) and Confederation of Unions of Employers and Entrepreneurs (KPZS-ČR): No.

Cuba. Yes, it would be convenient to adopt the standard(s) on this subject in order to extend the necessary protection to the workers concerned, yet without referring as indicated to the "increasing importance" of this type of employment, but to the "increasing use of it".

Egypt. The Preamble should also refer to Conventions Nos. 94, 96, 97, 110, 158, 162, 167, 169 and 176.

Finland. TT, LTK, FFE: No, it is wrong to cast new working methods in the same mould as conventional ones. In the future, for instance, an increasing number of people will be self-employed. The position of self-employed people is regulated by the norms of entrepreneurship, and ILO instruments should not interfere with the relationship between entrepreneurs.
SAK, STTK, AKAVA: Yes.

Greece. GCGW: Yes.

Germany. Subject to our fundamental opposition to an instrument on contract labour, the incorporation of the appropriate Preamble would be advisable with a view to identifying the protection requirements of the concerned groups of persons. Attention should, however, be paid to ensuring that the Preamble's wording corresponds to the general definitions of the concerned groups of persons and is not restricted to "workers". In this context, the general comment should be made that the concepts used in the questions regarding the future text have not been employed in a uniform manner; such consistency would, however, be indispensable for the establishment and utilization of unambiguous terms. This applies above all to the groups of persons to be protected ("worker", "contract worker", "employee", "subcontractor") and the relevant contracting partners ("employer", "user enterprise", "intermediary"). The term "client" (*Auftraggeber*) is missing.
BDA: No, irrespective of the unsuccessful attempts to produce definitions, there is no proof of "the growing importance of contract labour". In many cases, the contractual relationships considered do not relate to workers for the purposes of German law.
DGB: Yes.

Hungary. Government and trade unions: If the problem is to be settled universally, then the reasons for regulation should be spelled out in the Preamble.
Employers' organizations: It is unnecessary to include such provisions.

Iraq. GCTU: Yes.

Israel. Histadrut: Yes.

Italy. CONFINDUSTRIA: Replies to question 3 and all others questions are generally positive.

Japan. JTUC-RENGO, ZENROREN: Yes.

Jordan. FJCC, ACI: Yes.
GFJTU: Yes.

Netherlands. VNO-NCW: Yes.
FNV, CNV, MHP: A short Preamble is desirable, referring to the legal uncertainties of contract labour and its growing importance. It should indicate that the adoption of a set of standards is appropriate in order to guarantee that workers in contract labour relationships do not receive less than the protection envisaged by relevant ILO instruments already adopted.

New Zealand. See *General observations.*

Poland. Solidarnosc: Yes.

Rwanda. CESTRAR: Yes.

South Africa. The Preamble should refer to the balance to be found between the emergence of a greater variety of employment relationships and the need to ensure adequate protection for workers, particularly vulnerable workers.

BSA: The Preamble should also recognize that, while protecting contract workers, the instrument should leave room for the much needed flexibility in the labour market.

Spain. UGT: The Preamble should also recognize that in many cases contract workers are exploited.

Switzerland. Subcontracting is an important element of economic realities which are becoming more and more globalized and competitive. The objective of full employment should take account of new modalities of work, and should not be limited to quantitative criteria; a social component implies an important element of development. It is important not to hinder economic activities conducive to growth and not to put obstacles to new forms of work which can contribute to job creation and which coincide with workers' concerns. The Preamble should also reaffirm that economic development must not overrule the principle of adequate protection for all workers, which is a driving force of the ILO's normative activity.

ASM: The protection of workers mentioned in the Preamble should be limited to what is strictly necessary.

CP: The economic advantage of subcontracting should also be mentioned.

CSC/CNG, VSA: Yes.

Turkey. TISK: In the increasing flexibility of labour markets it does not seem to be appropriate, either for enterprises or for employees, to force this type of employment into the mould of the traditional type of employment and hinder its development by imposing new protective standards.

TÜRK-IS, CPTUT: Yes.

United Kingdom. The Preamble should be in line with appropriate ILO practice.

CBI: Preambles must obviously relate to the content of the instrument. Too often they are worded excessively widely and can create an impression that the perceived problem which they are intended to address is greater than is the reality. This should be avoided.

TUC: Yes.

United States. Yes, the workers concerned should be entitled to the same protection as other workers.

USCIB: No.

AFL-CIO: Yes.

Uruguay. Workers' sector: Yes.

Since the vast majority of replies were in the affirmative, the Office has retained the wording of this question and included it in the Proposed Conclusions with a view to a Convention *(Point 3).*

III. Methods of application

Should the instrument or instruments stipulate that their provisions should be applied by means of laws or regulations, collective agreements, arbitration awards, court decisions or any other manner consistent with national practice? **Qu. 4**

Total number of replies: 79.

Affirmative: 62. Argentina, Bahamas, Bahrain, Barbados, Belarus, Benin, Brazil, Bulgaria, Belgium, Burundi, Cambodia, Canada, Chad, China, Colombia, Costa Rica, Cyprus, Cuba, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Finland, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Japan, Lithuania, Kenya, Malaysia, Malta, Mauritius, Mexico, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Romania, South Africa, Spain, Sri Lanka, Suriname, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay, Zimbabwe.

Other: 17. Australia, Austria, Comoros, Ethiopia, France, Germany, Jordan, Kuwait, Myanmar, New Zealand, Pakistan, Qatar, Saudi Arabia, Slovakia, Sudan, Swaziland, Yemen.

Australia. The proposed instrument should not stipulate a specific means of implementing its provisions. Given the vast range of occupational categories and employment circumstances potentially covered by contract labour, Members should be able to implement its provisions by the most flexible means possible and in a manner consistent with national law and practice.

Austria. The instrument should state that its provisions are to be implemented in accordance with national practice, with member States being free to choose the means they wish to use from a list of possible examples.
BAK: Yes.

Belarus. The instrument should stipulate that its provisions should be applied by means of laws and court decisions.

Brazil. CNA, CNC: Yes.

Bulgaria. Yes, by means of laws.

Comoros. Not necessary, since the ratification of a Convention implies its application at the national level.

Costa Rica. UCCAEP: Each country should determine the appropriate means of reflecting the spirit of the principle.

Denmark. Yes. A provision corresponding to Article 8 of Convention No. 172, which gives the social partners maximum influence on national implementation of the instrument, should also be considered.

Ethiopia. By means of laws.

Finland. TT, LTK, FFE: There should be as much freedom of choice as possible.
SAK, STTK, AKAVA: Yes.

France. The instrument should allow Members to chose the legal tool to be used, in conformity with national practice.

Greece. GCGW: Yes.

Germany. Subject to our fundamental opposition to an instrument regarding contract labour, such provisions could only be enforced on a national level in Germany on the basis of domestic legislation.
DGB: By means of national legislation, mainly.

Hungary. Employers' organizations: No.
Trade unions: Yes.

Indonesia. Yes, protection should be in the form of national laws and regulations.

Iraq. GCTU: Yes.

Israel. Histadrut: Yes.

Japan. Yes. This provision should be stipulated in such a way as to allow each Member to implement the instruments according to their national circumstances.

JTUC-RENGO, ZENROREN: Yes.

Jordan. By means of national laws.

FJCC: By enacting laws and regulations.

ACI: By means of laws.

GFJTU: By means of collective agreements.

Kuwait. The instrument or instruments should stipulate that their provisions should be applied by means of laws or regulations in line with national practice.

Malaysia. Yes, the provisions should be applied by means of laws or regulations, arbitration awards and court decisions.

Myanmar. Regulations.

Netherlands. VNO-NCW: Yes.

FNV, CNV, MHP: Yes.

New Zealand. The instrument should state that its provisions should be applied in any manner consistent with national practice.

NZCTU: The instrument(s) should provide for a variety of protection for contract workers, including robust mechanisms to have conditions of employment determined through a process of collective bargaining.

Pakistan. By collective agreements with an arbitration clause.

Poland. Solidarnosc: Yes.

Qatar. Through the law.

Rwanda. CESTRAR: Yes.

Saudi Arabia. To be left to national practice.

Slovakia. By means of laws or regulations.

South Africa. Collective agreements, arbitration awards, court decisions or other means consistent with national practice should supplement, where appropriate, laws and regulations.

BSA: The choice of application machinery should be left to Members' decisions.

Spain. UGT: Yes.

Sudan. The provisions of instrument or instruments should be applied at a minimal level by means of laws, while additional rights should be applied by means of collective agreements.

Swaziland. The instruments' provisions should be applied by means of collective agreements.

Switzerland. ASM: A Recommendation should be applied through collective agreements.

CP: The instrument should deal with general principles only, which should be applied with the approval of the social partners.

CSC/CNG, VSA: Yes.

Turkey. TISK: It should be possible to incorporate the provisions of the instrument in the national legislation through statutory regulations or collective agreements, provided that they are applicable. Each country should be enabled to adopt regulations consistent with its own conditions for application of the instrument provisions.

TÜRK-IS: Yes.

CPTUT: The language found in many ILO Conventions concerning methods of application should be used.

United Kingdom. Yes, the instrument should allow for the greatest amount of flexibility.

CBI: Yes.

TUC: Yes. Given the extensive discussion in the Committee on Home Work at the 1995 and 1996 Sessions of the Conference about the role, if any, of individual bargaining, the TUC would emphasize that individual bargaining would be a wholly inappropriate manner to attempt to apply provisions of the Convention.

United States. USCIB: Yes.
AFL-CIO: Yes.

Uruguay. Workers' sector: Yes.

Yemen. By laws or regulations, or collective agreements.

This question has received a majority of replies in the affirmative. The Office has therefore retained the wording of the present question, which is the wording normally used in international labour standards and leaves each member State sufficient flexibility to decide by what means it should implement the instrument(s), and included it in the Proposed Conclusions with a view to a Convention *(Point 4).*

IV. Definitions

Qu. 5 *For the purpose of the instrument or instruments:*

(1) Should the term "contract labour" mean work carried out by a contract worker for a natural or legal person (hereinafter referred to as a "user enterprise")?

(2) Should the term "contract worker" mean a person who:

- *(a) performs work or provides services to a user enterprise:*
  - *(i) directly as an individual subcontractor? or*
  - *(ii) as an employee of a subcontractor? or*
  - *(iii) through an intermediary? and*
- *(b) who is in a condition of substantial economic and/or organizational dependency on the user enterprise without being formally an employee of that enterprise?*

(3) Should the term "subcontractor" mean any natural or legal person who contracts to have work performed or a service provided to a user enterprise?

(4) Should the term "intermediary" mean any natural or legal person who supplies a contract worker to a user enterprise, except where the intermediary is formally the employer of this worker?

(5) Should the instrument or instruments provide that Members should, with reference to subparagraph 2 (b) above, determine the criteria for deeming that a person is in a condition of substantial economic and/or organizational dependency on the user enterprise?

(6) Should the instrument or instruments provide that in making the determination referred to in (5) above, Members might consider one or more of the following criteria:

- *(a) the extent to which the work performed or the services provided by the person concerned is integrated into the user enterprise's normal activities?*
- *(b) the extent to which the user enterprise provides the capital, machinery, equipment and/or materials needed to perform the work or provide the services concerned?*
- *(c) the extent to which the user enterprise determines where the work is performed or the services are provided?*
- *(d) the extent to which the user enterprise provides the instructions or training required to perform the work or to provide the services concerned?*
- *(e) the extent to which the user enterprise exercises supervisory authority over the person concerned in relation to the work performed or the services provided?*
- *(f) the extent to which the user enterprise determines working time and other conditions of work?*
- *(g) the extent to which the user enterprise is entitled to exercise disciplinary authority over the person concerned in relation to the work performed or the services provided?*
- *(h) other (please specify)?*

Paragraph (1):

Total number of replies: 78.

Affirmative: 61. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Benin, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cyprus, Cuba, Czech Republic, Egypt, Estonia, Ethiopia, Finland, Gabon, Ghana, Greece, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mali, Malta, Mauritius, Myanmar, Namibia, Netherlands, Niger, Norway, Oman, Pakistan, Panama, Philippines, Portugal, Qatar, Romania, Saudi Arabia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, United Kingdom, Uruguay, Yemen, Zimbabwe.

Negative: 3. Australia, Denmark, Haiti.

Other: 14. Belgium, Brazil, El Salvador, France, Germany, Hungary, Japan, Mexico, New Zealand, Nicaragua, Peru, Slovakia, Switzerland, United States.

Paragraph (2):

Subparagraph (a):

Total number of replies: 64.

Directly as an individual subcontractor: 48. Argentina, Australia, Bahamas, Bahrain, Barbados, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Costa Rica, Cuba, Cyprus, Czech Republic, El Salvador, Estonia, France, Gabon, Ghana, Greece, Haiti, Indonesia, Iraq, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Philippines, Portugal, Romania, South Africa, Spain, Sri Lanka, United Arab Emirates, Uruguay.

As an employee of a subcontractor: 54. Argentina, Bahamas, Bahrain, Barbados, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, Comoros, Costa Rica, Cyprus, Czech Republic, Egypt, El Salvador, Estonia, Ethiopia, France, Ghana, Greece, Haiti, Indonesia, Iraq, Italy, Kenya, Lithuania, Malaysia, Malta, Mauritius, Mexico, Myanmar, Netherlands, Nicaragua, Niger, Norway, Pakistan, Peru, Philippines, Portugal, Qatar, Saudi Arabia, South Africa, Spain, Sudan, Suriname, Swaziland, Switzerland, Thailand, United Arab Emirates, United Kingdom, Uruguay, Yemen.

Through an intermediary: 39. Argentina, Bahrain, Barbados, Benin, Brazil, Bulgaria, Cambodia, Canada, Chad, China, Costa Rica, Cyprus, Czech Republic, Egypt, El Salvador, Estonia, Ethiopia, Gabon, Ghana, Indonesia, Iraq, Italy, Kenya, Lithuania, Malaysia, Malta, Mauritius, Mexico, Myanmar, Netherlands, Namibia, Nicaragua, Niger, Philippines, Portugal, South Africa, Suriname, Thailand, Uruguay.

Other: 6. Austria, Belarus, Belgium, Germany, Zimbabwe, Turkey.

Subparagraph (b):

Total number of replies: 62.

Affirmative: 49. Argentina, Bahamas, Barbados, Benin, Brazil, Bulgaria, Cambodia, Canada, Chad, China, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Ethiopia, Estonia, Gabon, Ghana, Greece, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mali, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Philippines, Portugal, Qatar, Romania, South Africa, Sri Lanka, Suriname, Thailand, United Kingdom, Uruguay.

Negative: 3. Australia, Burundi, Panama.

Other: 10. Austria, Bahrain, Belgium, Costa Rica, Finland, Germany, Japan, Malta, Switzerland, Zimbabwe.

Paragraph (3):

Total number of replies: 71.

Affirmative: 59. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Benin, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Egypt, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mali, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Norway, Oman, Panama, Philippines, Portugal, Qatar, Romania, South Africa, Spain, Sri Lanka, Suriname, Thailand, United Arab Emirates, United Kingdom, Uruguay, Yemen, Zimbabwe.

Negative: 1. Australia.

Other: 11. Belgium, Denmark, El Salvador, Germany, Japan, Malta, Pakistan, Sudan, Swaziland, Switzerland, United States.

Paragraph (4):

Total number of replies: 72.

Affirmative: 56. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Benin, Bulgaria, Cambodia, Canada, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Gabon, Germany, Ghana, Greece, Haiti, Indonesia, Italy, Kenya, Kuwait, Lithuania, Malaysia, Mali, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Panama, Peru, Philippines, Portugal, Romania, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, United Arab Emirates, United Kingdom, Uruguay, Zimbabwe.

Negative: 7. Australia, Burundi, Jordan, Norway, Pakistan, Qatar, Spain.

Other: 9. Belgium, Brazil, El Salvador, Finland, Japan, Malta, Switzerland, United States, Yemen.

Paragraph (5):

Total number of replies: 72.

Affirmative: 57. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Ethiopia, Finland, Gabon, Ghana, Greece, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mali, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Qatar, Pakistan, Panama, Peru, Philippines, Portugal, Romania, South Africa, Sri Lanka, Sudan, Suriname, Thailand, United Arab Emirates, Uruguay.

Negative: 5. Estonia, Haiti, Saudi Arabia, Swaziland, Yemen.

Other: 10. Australia, Belgium, Germany, Japan, Malta, Spain, Switzerland, United Kingdom, United States, Zimbabwe.

Paragraph (6):

Subparagraph (a):

Total number of replies: 64.

Affirmative: 51. Argentina, Australia, Bahamas, Barbados, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Ethiopia, Finland, Gabon, Haiti, Indonesia, Italy, Kenya, Malaysia, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Philippines, Portugal, Romania, South Africa, Spain, Sri Lanka, Sudan, Suriname, Thailand, Turkey, United Arab Emirates, United States.

Negative: 8. Egypt, Estonia, Ghana, Jordan, Kuwait, United Kingdom, Uruguay, Yemen.

Other: 5. Bahrain, France, Germany, Japan, Zimbabwe.

Subparagraph (b):

Total number of replies: 63.

Affirmative: 53. Argentina, Australia, Bahamas, Bahrain, Barbados, Belarus, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Ethiopia, Finland, Gabon, Greece, Haiti, Indonesia, Italy, Kenya, Lithuania, Malaysia, Mali, Mauritius, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Philippines, Portugal, Qatar, Romania, South Africa, Spain, Sri Lanka, Sudan, Thailand, Turkey, United Arab Emirates, United States, Uruguay.

Negative: 6. Egypt, Estonia, Ghana, Kuwait, United Kingdom, Yemen.

Other: 4. France, Germany, Japan, Mexico.

Subparagraph (c):

Total number of replies: 66.

Affirmative: 54. Argentina, Australia, Bahamas, Barbados, Belarus, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, El Salvador, Ethiopia, Finland, Gabon, Greece, Haiti, Indonesia, Italy, Kenya, Lithuania, Malaysia, Mali, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, South Africa, Spain, Sri Lanka, Sudan, Suriname, Thailand, Turkey, United Arab Emirates, United States.

Negative: 7. Egypt, Estonia, Ghana, Kuwait, United Kingdom, Uruguay, Yemen.

Other: 5. Bahrain, France, Germany, Japan, Jordan.

Subparagraph (d):

Total number of replies: 61.

Affirmative: 48. Argentina, Australia, Bahamas, Barbados, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ethiopia, Finland, Gabon, Greece, Haiti, Indonesia, Italy, Kenya, Malaysia, Mali, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Philippines, Portugal, Qatar, South Africa, Spain, Sri Lanka, Sudan, Thailand, Turkey, United Arab Emirates, United States.

Negative: 7. Egypt, Estonia, Ghana, Kuwait, United Kingdom, Uruguay, Yemen.

Other: 6. Bahrain, France, Germany, Japan, Jordan, Mauritius.

Subparagraph (e):

Total number of replies: 64.

Affirmative: 49. Argentina, Australia, Bahamas, Barbados, Belarus, Benin, Brazil, Burundi, Cambodia, Canada, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ethiopia, Finland, Gabon, Greece, Indonesia, Italy, Kenya, Lithuania, Mali, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Philippines, Portugal, Qatar, Romania, South Africa, Spain, Sudan, Suriname, Thailand, Turkey, United States.

Negative: 10. Egypt, Estonia, Ghana, Haiti, Kuwait, Malaysia, United Arab Emirates, United Kingdom, Uruguay, Yemen.

Other: 5. Bahrain, France, Germany, Japan, Jordan.

Subparagraph (f):

Total number of replies: 66.

Affirmative: 50. Argentina, Australia, Bahamas, Barbados, Belarus, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ethiopia, Finland, Gabon, Greece, Indonesia, Italy, Kenya, Lithuania, Mali, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Peru, Philippines, Portugal, Romania, South Africa, Spain, Sudan, Suriname, Thailand, Turkey, United States.

Negative: 11. Egypt, Estonia, Ghana, Haiti, Kuwait, Malaysia, Sri Lanka, United Arab Emirates, United Kingdom, Uruguay, Yemen.

Other: 5. Bahrain, France, Germany, Japan, Jordan.

Subparagraph (g):

Total number of replies: 58.

Affirmative: 45. Argentina, Australia, Bahamas, Barbados, Benin, Brazil, Burundi, Cambodia, Canada, Chad, China, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ethiopia, Finland, Gabon, Indonesia, Italy, Kenya, Kuwait, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Philippines, Portugal, Romania, South Africa, Spain, Sudan, Suriname, Thailand, Turkey, United States, Uruguay.

Negative: 8. Egypt, Estonia, Haiti, Malaysia, Sri Lanka, United Arab Emirates, United Kingdom, Yemen.

Other: 5. Bahrain, France, Germany, Japan, Jordan.

Subparagraph (h):

Total number of replies: 13.

Australia. (1) No. For the purpose of the instrument, contract labour should be defined by the presence of a contractual relationship, and not by the legal status of the principal contractor independently of the contractual relationship. A distinction should be made between contracts for service and contract of service. Persons who work under a contract for service are regarded, in Australian jurisprudence, as "independent contractors", where no employment relationship exists. Persons who work under a contract of service are regarded as "employees", governed by an employment relationship. (2)(a)(i) Yes. However, the distinction should be qualified by the requirement that a contractual relationship is found to exist, and legal obligations should not extend beyond the primary contract. (2)(a)(ii) No. Australian industrial relations law does not distinguish between employees of subcontractors and other employees. As an employee, the person would be adequately protected by awards and agreements and legislation relating to industrial relations, employment and occupational health and safety, as well as by relevant existing ILO instruments. (2)(a)(iii) No. It is inappropriate to extend a contractual relationship beyond the contracting parties unless an agency relationship exists. If the term "agent for the purpose of engaging contract labour" were included in the definition as a substitute for "intermediary", the definition would then be acceptable. (2)(b) No. This definition would be too broad. The situation would be better covered by specifying that a contractual relationship for the provision of labour, i.e. a contract for service, existed between the user enterprise and the worker. The more the definition distinguishes a contract worker from an employee, the more difficult it will be to determine the rules and responsibilities of governments and employers and to set standards with any level of tripartite agreement. To avoid this, the definition could instead refer in a general way to a relevant national authority determining the criteria for independent status, rather than fixing a definition in the instrument. (3) No. In Australia the term "subcontractor" is not clearly defined, but it is commonly taken to mean a person who is engaged in a contractual relationship with the person who originally contracted with the user enterprise to provide work or services. It is therefore appropriately applied in circumstances where there is proximity between the parties rather than to a particular person. (4) No. The term "intermediary" is too wide and would possibly extend obligations beyond the contracting parties. The definition would be acceptable if "agent" were substituted for "intermediary". If the definition of a contract worker as referred to in subparagraph (2)(b) is accepted, then Australia would agree with the need for Members to be able to determine the criteria for deeming that a person is in a condition of substantial economic and/or organizational dependency on the user enterprise. (6) Yes. The criteria listed could be used to make the determination referred to in subparagraph (5) above, as they all indicate that the contract worker is under the control of the user enterprise. In addition, any criteria would need to include factors indicative of a contractual relationship, such as intention, to differentiate between a contract for service and contract of service.

Austria. (1) Yes. The instrument should not set any comprehensive definition of contract labour but make a precise distinction between the various formulas addressed by the report and focus its examination on some of those formulas. Triangular contract labour arrangements (user enterprise — subcontractor or intermediary — contract worker) should be treated separately from bilateral arrangements under a different section. Equally, genuine job contracts should be excluded from the instrument's scope of application in as much as the need for protection of job contractors is lacking; conversely, "job contracts" which are signed merely for the purpose of circumventing the basic provisions applicable to workers (i.e. fictitious job contracts) should be covered by the instrument. Finally, the scope of application should indicate the borderline distinguishing the instrument from the Convention on home work. (2) The definition of "contract worker" should be geared primarily to the criterion, of economic and/or organizational dependency on the user enterprise. In particular, the definition should highlight the contract worker's status as being assimilated to that of a regular "worker". As mentioned in (1) above, triangular contract labour arrangements should be dealt with separately; consequently Austria is opposed to the incorporation of the criterion mentioned in the definition of "contract worker". (3) Yes. However, the term "subcontractor" may be ambiguous. The intention, clearly, is that an enterprise which executes contracts for its customers, and thereby becomes their contractor, employs for that purpose persons economically or organizationally dependent upon it; they are not conventional workers but "subcontractors" in as much as they take part in executing the customer's original contract. However, even when this direct linkage with a specific customer contract is not given, an employment relationship of economic subordination (without a real contract of employment), requiring protection, still exists. The customer contract may be partly executed by subcontractors. Economically dependent employees may provide essential operational services to the enterprise — services which do not directly relate to a customer's contract. If some economic dependency comparable to an employment relationship exists, such "contractors" — not "subcontractors" in the strict sense in as much as there is no linkage with a specific contract — must enjoy the protection afforded by the planned instrument. (6) Yes. Given the highly diverse forms of dependency, a list of such criteria should not be restrictive but given by way of examples. For the purpose of emphasizing that the contract worker is assimilable to the concept of "worker", the criteria should not only be linked to the contract worker's legal status (personal dependency, subordination to instructions, etc.) but also to his/her economic position (e.g. dependency for his/her livelihood upon remuneration received from one or more user enterprises, regularity or longer term duration of employment, regular wage payments, absence of his/her own business premises, etc.). (6)(h) Austria suggests that criteria also be established from the contract worker's standpoint (e.g. to what extent the remuneration received from the user enterprise determines his/her livelihood, what is his/her personal interest in the form taken by the contractual relationship).

BAK: (1), (2) Yes. (3) Yes. Comments similar to that of the Government. In any event, the term "subcontractor", as presented in question 5(3), meets these concerns; hence, the problem raised here is merely one of terminological precision. (4) Yes, although the issue of manpower hire/supply, i.e. labour-only contracting, requires clarification. A hire firm is clearly not an "intermediary" in the sense of question 5(4). It is also uncertain whether such an agent is a "subcontractor" in the sense of question 5(2)(ii). Consequently, although the problem of supply workers is treated by the report as a component of contract labour, it is not clear whether manpower hire/supply is truly covered by the definitions presented here. The BAK certainly believes that manpower hire/supply should also be covered by the ILO instruments on contract labour, although a clear distinction between it and other forms of contract labour could prove valuable (see reply to question 5(6)). (5) Yes, although certain criteria should possibly be supplied in the Recommendation. (6) The criteria listed largely meet the wish voiced in relation to (5) above. Nevertheless, essential matters remain unresolved. It is not clear, firstly, whether the criteria are merely intended as suggestions to Members and, secondly, whether one or all of them have to be met. It would not appear advisable to aim for an entirely non-binding system in as much as member States should be obliged, whenever it has been objectively found that a need for protection exists, to cover the relevant groups of persons by the arrangements pursuant to the planned instrument. Any proposal that the entire list of criteria must be met should be rejected: criteria (c) to (g), in particular, jointly cover the scope of a regular employment relationship, and hence non-employees requiring protection on account of their economic dependency would be excluded if all the criteria had to be complied with. The access threshold to the protection in question should, therefore, be set, at the very least, lower than would be the case if criteria (c) to (g) had to be met simultaneously. In this regard, the relevant definition quoted in the government submission on the social insurance of persons assimilable to employees (72 BlgNR, 20. GP, 251) states that a person is assimilable to employee status "if, in the consideration of an employment relationship on the basis, in particular, of the following characteristics, the impression of an economic dependency of the person in employment with regard to the employer predominates, without all or the majority of these characteristics needing to be complied with each individual case. The economic dependency of the employed is suggested to be the following: (i) whenever the labour input, in comparison with the employed person's capital input, predominates; (ii) whenever the employed person performs services principally for the employer or a limited number of employers or their customers and the enterprises which are economically closely related to them and, therefore, not for an unlimited, constantly changing number of employers; (iii) whenever the employed person, in performing his/her work, disposes personally of a significant material, or non-material, enterprise structure (in particular, business premises, operational resources, company registration, sales accounting, advertising resources deployed to win part of a general market); (iv) whenever the employed person, in his/her business activities, is subjected to legal or practical restriction in his/her relationship with his/her employer (e.g. competition clauses, obligation to notify the identity of his/her representatives or some similar restriction, the obligation to use particular work materials and products)". With their emphasis on an organizational dependency upon a user enterprise, criteria (c) to (g) could be used as additional indicators of whether an economic dependency requiring protection exists which, to a large extent, can be assimilated to a regular employment relationship. With regard to manpower hire/supply, criteria (c) to (g) will prove typical characteristics. If it is to be covered by the instruments under consideration (see reply to (4) above), it would appear advisable to separate the various forms of corresponding definitions with a view to focusing the Conference discussion on existing realities. This implies separating manpower hire/supply from other forms of work involving an economic dependency upon a user enterprise with which no direct contract of employment has been signed (i.e. cases assimilable to regular employees).

Bahrain. (6)(a) Contract labour is an integral part of the normal activities of the user enterprise. (c) The user enterprise has the absolute power to determine where the work is performed. As to provision of services, it should be decided either by prior agreement or by the statute of the enterprise duly established. (e), (f), (g) The user enterprise exercises this authority.

Barbados. (6)(h) Also, the extent to which: (i) the user enterprise can determine who actually does the work, and makes social insurance contributions; (ii) the contract worker does the same work as normally performed by the regular employee of the user enterprise.

Belarus. (2)(a) For (i)-(iii), the term "contract worker" should mean a person who performs work or provides services to a user enterprise.

Belgium. (1)-(6) As already explained, Belgium would accept a definition of contract labour only if the following distinctions were made: (i) on the one hand, the situation where a worker is supplied to a user enterprise which enjoys the legal authority that normally belongs to the employer of a worker; (ii) on the other hand, the situation where services are provided or goods are supplied by an enterprise to another enterprise and the employees of the former are not subject to the authority of the latter. In the first case the user enterprise enjoys legal authority that is analogous to that of the employer in respect of the workers supplied. In the second case the link of dependency that may exist is established between the user and the subcontractor who is the actual employer of the interested workers. Such link is characterized by the economic dependency that would exist between the user and his or her contractor, the latter being either the employer of the concerned workers or a self-employed worker that directly supplies goods or provides services to the user. The criteria to be established under this point should be adapted to that distinction. Whereas a number of criteria (such as determination of working time, conditions of work and exercise of disciplinary authority) denote legal subordination, other criteria, for example those under (a), denote economic dependency.

Brazil. (1), (3) The instrument should include a less tautological and more precise definition of the specific nature of "contract labour". Furthermore, although it recognizes the existence of a variety of forms of subcontracting by natural persons, the Government expresses reservations concerning the effectiveness of a regulatory instrument of this kind, since subcontracting is an activity for which it is difficult to establish standards. (4) The instrument should consider the "intermediary" either as a legal person, and thus as a "subcontracting" employer, or as an employee of an enterprise, providing services. (6)(h) Also, remuneration.

CNA: (2), (6) Yes.

CNC: (1) Yes. (2)(a) Yes, for (i) and (ii). (2)(b) Yes. (3) Yes, but the words "or a service provided to a user enterprise" should be deleted. (4) No. (5) Yes. (6)(a) Yes, the words "persons concerned" should be replaced by the word "subcontractor".

Burundi. (4) No, this term should not be applied in this context. (6)(h) Non-limited remuneration should also be mentioned here.

Canada. (2) Yes. However, clarification should be made of the relationship between (a)(i) and (a)(ii) to an independent entrepreneur. Clarification should also be made as to whether (b) would apply to the situation where a contract worker is contracted to several user enterprises at one time. (3), (4) Yes, though "subcontractor" should be distinguished from "intermediary" if both terms are to be used. A "subcontractor" may be defined to mean an "employer" who contracts to have work performed or a service provided to subcontractors who are not employers of the contract worker. (6) Yes, one or more of (a)-(g). (h) For example, whether the provider of services has the chance of profit or the risk of loss (related to variables other than the individual's own labour).

Costa Rica. (1) Yes, but of course it should be borne in mind that the concept of work implies the existence of an unequal relationship, in which one of the parties, because of the economic power which it has, predominates over the other, which cannot avoid this dependency because of the need to achieve a certain economic stability providing a better quality of life; hence the importance of adequate treatment in the instrument, with a view to ensuring that such a recruitment system does not prove detrimental to the worker. (2)(a) Yes, although each of the three definitions should be explained more precisely: for example, in point (ii) there appears to be some confusion, since the worker in question, although a contract worker, would appear to be an employee subject to a "normal" contract of employment. Contract labour should be used only in special cases; the nature of the work carried out and the lack of dependency involved (since the work may be on an own-account basis), should not result in any prejudice, especially of an economic kind, to the contract worker. (2)(b) This provision is rather ambiguous; some important terms, such as degree of economic and/or organizational dependency, should be part of the definition given in (a) above. (3) In addition to indicating who is the subcontractor, the provision should also indicate the degree of liability which he assumes vis-à-vis both the user enterprise and the contract worker. (4) Yes, but the same observations apply as those made in connection with "subcontractor". (5) Yes, as indicated above, but bearing in mind that the greater dependency — whether economic or organizational — assimilates this form of contract labour to that of a contract of employment. (6) As noted above, all these criteria should be included in the definition of a contract worker; of course, if the enterprise pays for a service or a piece of work, it is entitled to impose its own conditions for the correct performance of the work or service, which takes us back to the most important element in any labour relationship: subordination. This means that contract labour cannot escape the characteristics and conditions associated with a "normal" contract of work and it is very difficult to conceive of a different form of recruitment with the same results, except in the case of work requiring a high professional level, in which case the parties would be on an equal level.

UCCAEP: (1) Yes. (2) Who is in a situation of dependency characteristic of wage workers, without having the status of an employee of the enterprise because of the latter's desire to avoid responsibilities and obligations as an employer. (3), (4) Redundant. (5) Yes. (6) This should be left to Members to decide.

Czech Republic. SPD-ČR, KPZS-ČR: No.

CMK-OS, Confederation of Art and Culture (KUK): No.

Cuba. (2)(a) Yes, for (a)(i). The figure of intermediary should be excluded.

Denmark. (3) The term "subcontractor" should mean the enterprise which concludes a contract to perform work or deliver a service for another enterprise on its own account and risk and using its own employees. (4) Replace "a" by "any" after the word "supplies".

Egypt. (5) No, because compliance with the provisions of the Convention implies that ratifying Members should, according to the Constitution of the ILO, establish these criteria without being requested to do so by the Convention.

El Salvador. (1), (3), (4) The division of persons into "físicas" and "morales" is not applicable within El Salvador's national jurisprudence.

Estonia. CEIE, ECEU: (2)(a) Yes for (i) and (iii). (6) Yes, for (a)-(g).
AETU: (2)(a) Yes, for (i)-(iii).

Finland. (2)(a)(i)-(iii) Possible alternatives, depending on the content of a Convention. (2)(b) This type of limitation may be needed. (4) In Finland there are no private intermediaries such as the ones referred in the questionnaire. (5) Yes, but the wording should be made more general, for instance by adding the words "as necessary".

TT, LTK, FFE: (1) The proposed definition of the concept is not feasible. The instrument should not strive for a unified definition of the terms "contract labour", "contract worker", "subcontractor" and "intermediary". The concept of work done in contract relationships other than contracts of employment should be defined by the contracting parties as they wish. Work done under other contract relationships should not be equated with an employment relationship, except in extreme and exceptional cases. However, the adoption of a definition is desirable. (2)(a) No, the different alternatives given are proof in themselves of the extent to which this is a nebulous concept. (2)(b) This type of situation is impossible to define. All enterprises are increasingly dependent on each other and focus on their core operations by procuring outside services. (3) This should not be defined. Under this definition an increasing number of companies in a commercial relationship with another enterprise would, in fact, fall into the category of "subcontractors". In the market, however, this is purely a question of closer cooperation between companies, and nothing more. (4) No, the concept is too vague. (5) Each country and legal system has, in varying degree, its own interpretation of concepts such as "self-employed entrepreneur" and "formal employee". These interpretations should be honoured instead of complicating the matter with ILO instruments. (6)(a)-(g) The most essential criteria are missing from this list. In defining the position of a self-employed entrepreneur and an employee, the main criterion is the right to exercise supervisory and managerial authority. On the whole, there should be greater emphasis on whether the person doing the work is in a position to accept other work, and whether he/she can use assistants or replacements.

SAK, STTK, AKAVA: (2)(a) Yes, the *de facto* situation should be decisive, instead of the specific form taken by the employment relationship. (2)(b) Yes, this involves making a distinction with Convention No. 96. (3), (4) Yes, the concept should apply to both subcontractor and labour subcontractor situations. (5) Yes. In determining these criteria, the employee's *de facto* position should be taken into account. The Convention should specify situations of economic/organizational dependency more clearly. (6) Points (a)-(g) are useful and should be taken into account. In the case of economic dependency, the following factors would also be worth taking into account: how the employee's wage is determined (hourly, weekly or monthly salary, commissions), whether the person defined as the "worker" is required to do the work himself or herself, decision-making authority concerning the work, etc.

France. (1) Contract labour implies the existence of a commercial contract (*contract d'entreprise*) between the enterprise who gives out orders (*l'entreprise donneuse d'ordre*), i.e. the contracting-out enterprise, and the subcontracting enterprise, or the subcontractor who might be either an independent subcontractor or an enterprise employing other workers. In the last case, it is quite clear that the whole set of labour law is applicable to the workers concerned. This definition makes the questions raised in questions 8, 10, 13, 17 meaningless. To avoid the risk of confusion with temporary work, i.e. where a temporary work enterprise places its employees at the disposal of the user enterprise, it is proposed that the term "user enterprise" be replaced by a clearer definition, e.g. the "contracting-out enterprise" and the "subcontractor". (3) Yes, the subcontractor supplies the resources, materials and instruments. There is a commercial contract (*contract d'entreprise*). (5) Yes, the national judiciary would provide the necessary definition. (6) The set of criteria, should they be applied, characterize false subcontracting and have been developed by national jurisprudence. For subcontracting to be legitimate, the term "user enterprise" should be replaced by the term "subcontractor". (6)(a) Should be completed by the phrase "or constitutes a form of know-how which is specific to the subcontractor and which entails the use of the latter's own technique or process". (h) Also, (i) the obligation on the subcontractors to produce a result; and (ii) the criterion of remuneration — subcontracting is in general concluded for a fixed sum, while the supply of workers (*le prêt de main-d'œuvre*) is paid according to hours, days or months of work.

Gabon. (h) Measures to ensure that the user enterprises pay contract workers regularly.

Germany. The definitions presented in (1)-(4) are not compatible with German national law. The proposed arrangements deal with different forms within which a worker's status may fluctuate without any precise borderlines being possible. This applies to the legal status of workers, persons assimilable to workers, the so-called "fictitiously self-employed" (persons who simulate self-employment in order to circumvent labour and social insurance protection regulations), special groups of temporary workers (cf. in particular, question 5(a)(iii)) and homeworkers in the sense of the Home Work Act. It is frequently difficult to draw the borderline between dependent employment and self-employment in individual cases and, under German national labour, social insurance, tax and industrial law, this cannot always be done in a uniform manner. In principle, many activities may be exercised lawfully both in the form of dependent employment and self-employment. Only after an assessment of all circumstances does it become possible to determine whether a particular activity is to be classed by law as self-employment or whether a person is performing work in dependent employment and is therefore possibly only "fictitiously" self-employed. It does not appear opportune to deal with this set of problems as one component of an ILO Convention in as much as it is inconceivable that a satisfactory solution would be found allowing ratification of the resulting instrument by an adequate number of member States. Furthermore, the danger exists, in particular for the groups of persons addressed by these broad definitions of temporary workers and homeworkers, that there would be duplication of existing international arrangements (cf. Home Work Convention (No. 177) and Recommendation (No. 184), 1996). Hence, the borderlines between the above-mentioned groups of workers should be drawn by national legislation without any linkage to elaborate international standards; international instruments, on the other hand, should be reserved for clearly defined fields of application. Moreover, the concept of employment is of prime importance in German social insurance. In this respect, the decisive factor is not economic dependency (as, in particular, in question 5(2)(b)) but personal dependency. As regards subparagraphs (2)(a)(iii) and (4) as well as question 12, it is true that the concept of direct employment of workers as part of an employment relationship with the user enterprise (client) is excluded from the term "contract labour" and, therefore, from the planned instrument's scope of application. It is suggested that, with a view to guaranteeing a clear distinction from job placement activities, clarification be given that, for the purposes of this instrument, all "intermediaries" are to be understood only as intermediaries for service and job contracts for contractors (contract acquisition), but not (private) job placement agents. In view of the fact that, under German law, the "intermediary" (but not the private job placement agency) is, like the hire firm, always formally the temporary worker's employer, manpower hire/supply would be excluded from the application of the planned instrument. Germany would welcome this in as much as the planned instrument may involve some major encroachment upon the fundamental right freely to pursue an occupation. This encroachment could not be justified by the need to protect any more fundamental right. In that context, the following should be stated in respect of paragraph (5): "the ratifying States should not be obliged to set certain demarcation criteria". Germany certainly welcomes the fact that the criteria listed in paragraph (6) are intended to be optional. The Federal Labour Tribunal's jurisprudence provides the following criteria indicating whether work is performed as part of some personal dependency: (i) if the individual receives and is bound by personal and technical instructions; (ii) if the work is to be performed within a certain time-frame and at a particular location; (iii) planned availability for duty, indispensable for the smooth running of operations; (iv) integration into the firm; (v) continuous close cooperation with other persons working for the employer; (vi) if the employer is entitled to determine the person's working hours. The issue of whether an activity is performed in personal dependency as part of an employment relationship or independently as part of a service or job contract is always determined by a general assessment of all circumstances involved in the individual case and on the basis of generally accepted principles.

BDA: (1)-(6) No. The definitions presented here are contradictory and incompatible with the existing German legal system. They are in no way suitable for a sufficiently clear description of the groups of persons considered. Terms such as "subcontractor", "user enterprise" or "intermediary" demonstrate clearly that the definitions refer to domains far outside the labour law competence of the ILO. Any instrument adopted would need to state unambiguously that the provisions are applicable exclusively to workers. In this regard, the definition of "contract worker" proposed in paragraph (2) is unusable. In Germany a large proportion of services or work are performed by self-employed individuals. It is a fundamental characteristic of economic structures entailing a division of labour that enterprises have recourse to the services of other enterprises or self-employed individuals for the production of goods or supply of services. The question of whether a contractual relationship has been established directly or with the assistance of an intermediary has no major consequences for the protection requirements of one of the contracting parties. The criterion of economic and/or organizational dependency also applies to a large extent to enterprises and — under German law — self-employed individuals. It should, for instance, be pointed out that not only the so-called "one-firm-supplier" depends upon his/her client; the client is also dependent upon the supplier's services. In the majority of cases, contractual relations are characterized by a mutual economic dependency.

DGB: Given the intention of the instrument and the intended purpose of granting protection, the criterion should be not the type of contract but the employee's economic dependency on the contractor, and whether he or she requires social protection similar to that of an employee. The above-mentioned criteria in the corresponding provisions of the German Collective Agreement Act should be used.

Ghana. (h) Anyone who renders services for remuneration but is not a full-time employee on contract.

Greece. GCGW: (1)-(5) Yes. (6)(h) The instrument or instruments should envisage that, for the purposes of establishing the definition contained in paragraph (5), Members might accept the criteria listed in (6)(b), (d) and (e).

Haiti. (1) The term "contract labour" should mean work performed by a natural or legal person for a natural or legal person referred to as a "user enterprise". (6)(h) The instruments should ban situations of virtual servitude where contract workers are paid a third of regular employees of the user enterprise.

Hungary. Government and trade unions: In paragraphs (1) and (3) it would be important to mention "economic enterprises without legal personality" besides the categories of natural and legal entities. According to Hungarian law, such an economic enterprise does not have the right to act as a legal entity. In paragraph (2) it is not necessary to discuss (i). The criterion mentioned in paragraph (6)(e) can serve as the basis of the assessment of the legal relation.

Employer organizations: (1)-(2) The different element of a definition of contract labour has to be defined one by one in a Convention so that contract labour can be easily distinguished from other types of legal relationship or occasional employment contract. The contract employee can only be a natural person who performs a specified amount of work or services or manufactures a given amount of products using the technical and financial conditions provided by the contractual party during a certain period or up to a certain level.

Indonesia. (2)(a) Yes, the term "contract worker" is preferable. (6)(b) Yes, it should be in line with national laws and regulations in member countries.

Iraq. (2)(a) Yes.

GFTU: (1) Yes. (2)(b) The word "substantial" should be deleted because it has no defined meaning and can lead to various interpretations. (3), (4) Yes. (5) Yes, but the word "substantial" should be deleted. (6) It is suggested that the text of paragraph (6) be introduced into a Recommendation.

Israel. Histadrut: (1), (2) Yes. (3) The term "subcontractor" should be distinguish from a "labour-subcontractor" who supplies contract workers. Both terms "subcontractor" and "labour-subcontractor" should by definition apply only to established, properly registered, solvent and legitimate businesses. (4) The term "intermediary" should be defined to mean any natural or legal person who supplies a contract worker (i.e. who engages workers with no employment relationship formally established to have work performed or services provided for the benefit of, on behalf of, under the supervision or control of, or with the resources provided partially or completely by a user enterprise) to a user enterprise, except where the intermediary is formally the employer of this worker. (5) Yes, but a Recommendation should provide further guidance on establishing economic/organizational dependency. (6) Yes, for (a)-(g). (6)(h) Also: (i) the method and timing of payment of wages, whether by hour, week, month, incentive or combination of several; (ii) the significance of investment in capital, tools, machinery, materials, etc.; (iii) the ability to realize profits or run losses; (iv) control of workers' earnings opportunities by providing materials, resources and markets; (v) who makes fiscal and social security contributions? (6) who pays the costs of doing business, including travel expenses?

Japan. In view of the actual circumstances of each Member, the concepts of "contract labour", "contract worker", etc. should not be defined uniformly. It is necessary to enable each Member to adopt flexible measures. Such a provision could, for example, stipulate that the concepts "should be established by each Member in accordance with its actual circumstances". (2)(b) This should be decided by each Member in the light of its actual circumstances. In this case, it is appropriate to take into account the fact that the user enterprise actually decides the working conditions for its contract workers. In addition, while it is not clear whether home work is included in the category of contract labour, international instruments were adopted on home work in 1996, and these should be uniformly applied to home work. It should be stated clearly that "home work" is excluded from the definition of "contract labour" and "contract worker".

NIKKEIREN: These terms are defined and used differently by member States. A uniform definition should not be provided. The terms as well as the procedures for defining them should be determined by Members' actual circumstances. The same applies to the issue addressed in (2)(b) and (5).

JTUC-RENGO: It needs to be clarified that workers employed by labour contract who are considered really to be doing the work of regular full-time workers should be treated according to general labour standards.

ZENROREN: (1) Central and local governments should also fall under the definition of the "user enterprise". (2) Yes. (3), (4) The terms "subcontractor" and "intermediary" should also include a workers' cooperative or workers' group which is not incorporated. A labour-only subcontractor should be prohibited in principle and permitted only in very limited and exceptional cases. (5), (6) Yes.

Jordan. (6)(c), (d), (e), (g) According to the agreement. (6)(f) According to the Labour Code.

FJCC: (1) Yes. (2)(a) No, for (i)-(iii). (2)(b) Yes. (3)-(5) Yes. (6)(a), (b) Yes. No, for (c)-(g).

ACI: (2)(a)(i) Yes. (6)(a) It should not necessarily be the user's "normal" activity. (6)(b), (c) According to the agreement. (6)(e) The enterprise should have the right to supervise. (6)(f) According to the Labour Code. (6)(g) According to the provisions of the Labour Code and terms of the agreement between the parties.

GFJTU: (1) Yes. (2)(a) Yes. (3) Yes. (6)(c), (e)-(g) Yes. (6)(a) No.

Kenya. (6) The competent authority should have leeway in determining the criteria in the light of economic development.

Kuwait. (6) No, because all criteria mentioned depend on the legal situation of the intermediary and on the extent of his responsibility for the work entrusted to him.

Malaysia. (6)(e) No, supervisory authority should be exercised by the employer of the contract worker, i.e. the subcontractor who supplies the contract worker to the user enterprise. (6)(f) No, the working time and other conditions of work should be determined by the employer of the contract worker. (6)(g) No, disciplinary authority should be exercised by the employer of the contract worker.

Malta. (1) Yes, it is agreed that contract labour should mean any work carried out by a contract worker for a natural or legal person. (2)(b) The reference to a "condition of substantial economic and/or organizational dependency on the user enterprise" is too vague. (3) "Subcontractor" should cover any natural or legal person who contracts to have work performed or a service provided to a user enterprise, including suppliers of materials, any natural or legal person contracting for the destination or delivery of the output and any natural or legal person performing any intermediary production process. (4) Where use is made of intermediaries (i.e. employment agencies) to supply human resources to the producer, the intermediary should be deemed to be a subcontractor. (5) If the phrase "substantial and/or organizational dependency" is included in the text of the instrument, then the Members should determine the criteria which apply to the interpretation of substantial economic or organizational dependency.

Mauritius. (6)(d) It is suggested that this subparagraph be amended as follows: "instructions with or without required training".

Mexico. (1) The term "contract labour" should mean work carried out personally in subordination to a natural or legal person, where the latter does not have resources of its own sufficient to fulfil the obligations arising out of the relationship with its workers and performs work or services exclusively or principally for another natural or legal person. (2)(a)(i) No, since in many cases the individual subcontractor could be considered as a "provider of professional services" and would hence be subject to ordinary law. Therefore, whether he or she is considered a subcontractor within the meaning of the Convention would depend on the nature of the work performed. Criteria should be laid down for determining whether a person is a subcontractor within the meaning of the Convention or a provider of professional services. (ii) Yes, provided that the subcontractor does not have resources of his or her own sufficient to carry out contracted work, otherwise he or she would be considered as the employer. (iii) Yes, meaning a person who contracts or intervenes in the contracting for services of another person or other persons for the performance of work for an employer. Enterprises which contract for work with a view to carrying it out with their own resources which are sufficient to meet their obligations towards their workers shall not be considered as intermediaries, but as employers. (2)(b) Yes, although, rather than "substantial dependency", the focus should be on integration in the chain of production, since a contract worker performing work using the resources of the user enterprise acquires the same rights as the workers who are subordinate to that enterprise. (3) Yes, respecting the terms used in each country to denote the same meaning. (4) Yes, but it should be specified that the intermediary contracts or intervenes in contracting for work. (5) See under (2)(b). The instruments should lay down specific criteria for determining dependency between the worker, the subcontractor and the user enterprise, including economic and organizational dependency. (6)(b) Not necessary. (h) As mentioned above, whether the subcontractor has resources of his or her own sufficient to meet his or her obligations to the worker.

Myanmar. (6)(b) As and when required. (6)(c), (d) As and when necessary.

Netherlands. (2) First, an indication should be given as to how the definition of "subcontractor" relates to that stated in (3), where the "subcontractor" can have the work done. Secondly, the relevance of the words "organizational dependency" is not entirely clear. Economic dependency is the essential element. Because of the words "and/or", this does not even have to be included. We do not think this is how it is meant. (3), (4) It is not absolutely clear whether deployment via a temporary work agency falls under (2)(a)(ii). In the Netherlands it has recently been decided legally to view the relationship between the temporary worker and the temporary employment agency as a regular employment relationship, with a special procedure for ending the relationship within the first 26 weeks. Legislation on this, supported by the social partners, is now being prepared. A separate law will include a few more regulations: a ban on the supply of workers during strikes; a pay-ratio rule; and special provision in highly exceptional cases. Items such as education and training, pension build-up and deviation from labour law are to be the subject of collective bargaining. This can offer more protection than an ILO instrument. The Netherlands regulations will therefore not need to be amended.

VNO-NCW: The VNO-NCW would have serious objections if the result of a ILO instrument were a totally new labour contract, let alone a whole range of new labour contracts, each of them deviating in a specific way from the normal labour contract as already regulated in labour law. The general point is that in many situations companies and individuals try to avoid the inflexibilities and high costs of normal labour contracts by using a great variety of existing or new formulas. In the case of short or little jobs this is justified and is not to be condemned. But if this were to be the normal pattern in the economy and on the labour market, working people could find themselves deprived of reasonable protection during a great part of their working life. If the ILO urges its Members through a Convention to put an end to all formulas deviating from the normal labour contract or insists on converting them all into more or less normal labour contracts, it would be a complete failure. In a Recommendation the ILO could only urge its Members and the social partners to take action against abuses of formulas deviating from the normal labour contract. We doubt whether the ILO instrument would need a whole range of definitions. A more viable solution would be to outline in general terms the elements that are common in all existing and new formulas deviating from the labour contract. Furthermore, the instrument could apply the concept of presumed intention.

FNV, CNV, MHP: (1) and (2) Yes. It is understood that the definitions of "contract labour" and "contract worker" refrain from any reference to specific legal types of contracts (see reply to question 1). While supporting the second remark of the Government on this issue above, the FNV, CNV and MHP do not support the first one. Besides, the definition of contract worker should also include temporary work agency (TWA) workers. (3), (4) Yes. TWA workers are covered either by (ii) or (iii) of subparagraph (2)(a) above. (5), (6) Yes. (6)(b) It is suggested to insert after "provides" the words "directly or indirectly (through an intermediary)". (6)(e) The exercise of supervisory authority may be based on delegation/assignment by the formal employer (i.e. the subcontractor mentioned in (2)(a)(ii)).

New Zealand. See *General observations*. The New Zealand Government does not consider that employment law or other obligations should be imposed on contracting or other parties unless they are parties to an employment relationship. The Employment Contracts Act defines an employee as any person of any age employed by an employer to do any work for hire or reward, including homeworkers and persons intending to work. The courts have developed a series of tests by which they distinguish between independent contractors and employees. The Court of Appeal has held that when a contract is in writing, it is the true interpretation and effect of the written terms that determines the status of the relationship. The focus of the inquiry is on the intention of the parties, which is to be arrived at from a consideration of the whole of the contract read in the light of all surrounding circumstances. Where the intention of the parties as to the nature of the relationship is not clear, the courts apply other tests, such as custom and practice in the industry concerned, and tests of presumed intention. These include the degree of control exercised by an alleged employer over how the work is done; the degree to which an individual is integrated into the enterprise concerned; whether the person is performing the services as a person in business on his or her own account; and whether the true intention of the parties was a relationship of employment rather than one between independent contracting parties. New Zealand considers it appropriate that these tests continue to apply in determining the status of contracting parties. New Zealand therefore does not support any of the definitions suggested.

NZCTU: (Questions 5-20) Yes. NZCTU is particularly insistent that contract workers have the right to organize and bargain collectively.

Nicaragua. (1), (3) It would be more accurate for the Spanish to refer to "una persona natural o jurídica" rather than "una persona física o moral".

Niger. (3) Insert "in writing or verbally" after the word "contracts".

Norway. (2)(a)(ii) Yes. With reference to question 14, the inclusion of the employee of a subcontractor should not lead to joint and several liability of the user enterprise and subcontractor, as this might whittle away the employers' liabilities.

LO: (2)(a) Yes. (4) The instrument should apply to temporary work agencies. The wording of this paragraph should read as follows: "The term intermediary should mean any natural or legal person who supplies a contract worker to a user enterprise, except where the intermediary is not formally the employer of this worker".

Pakistan. (3) This term should not be introduced.

Panama. (2)(a) and (b) should be deleted. (3), (4), (5) Yes, this definition is consistent with Panama's legal system. (6) The criteria are appropriate as a provisional basis for the definitions given.

Peru. (1) Add: "who is detached on behalf of his/her employer". (3), (4) Both "subcontractor" and "intermediary" should mean any legal person who supplies a contract worker to a user enterprise and is not the employer of this worker.

Poland. Solidarnosc: (1), (2) Yes. (3) The definition of "subcontractor" should distinguish between a "subcontractor" for work or service and "labour subcontractor". Both definitions should only apply to established, legitimate and solvent business. (4), (5) Yes. (6)(a), (c), (d) No. (6)(e)-(g) Yes. (6)(h) Also: (i) who makes fiscal and social payments? (ii) how workers are paid — whether by hour, week, month or by result.

Rwanda. CESTRAR: (1), (2), (5) Yes. (3) A distinction should be drawn between the term "subcontractor", who contracts to perform work or to provide services to a user enterprise, and "labour subcontractor", who contracts to supply workers to a user enterprise. Both terms should apply only to established, solvent and legitimate enterprises. (4) The term "intermediary" should be defined so as to cover all those who engage workers without an employment relationship formally established to perform work or provide services to a user enterprise for the benefit of, on behalf of, under the supervision or control of, or with resources provided (in main or in part), by the user enterprise. (6)(h) Also: how workers are paid — by hour, week, month or by result; the significance of investments (or interest) in capital, tools, materials, etc.; the ability to realize profits or run losses; control of workers' earning opportunities by providing materials or resources and markets; who makes fiscal and social security payments? who pays for business costs, including travel?

Slovakia. The definition of "contract labour" resembles in some aspects the contract of consensus in Roman law, the so-called *locatio condictio operis*, i.e. a contract labour service which is performed by a contract worker for a natural or legal person whose aim is an agreed work performance result (work, duty, service) within a determined sphere of work and for a remuneration determined and stipulated in advance. National law should determine whether it is possible to approach and to use a "subcontractor" or an "intermediary" within the framework of contract labour. The criteria given in paragraph (6) should be applied.

South Africa. (1) The definition of "contract labour" should not be phrased too widely and the instrument should not be directed at the traditional commercial relationship between user enterprises and other enterprises which act as their contractors/subcontractors. (6) The criteria listed in this paragraph are extremely helpful. However they appear to relate primarily to the issue of organizational dependency. There are numerous criteria that can be used to define economic and financial dependency, given the wide variety of economic relationships that could potentially be covered. The Convention could permit the use of an alternative approach — that is, to utilize a negative definition in which an express context is given to "independent" contractors, all persons who do not meet these criteria being assumed to be "dependent".

BSA: (1) Yes. (2)(a)(i) and (iii) Yes. (2)(b) If such a person is in a condition of substantial economic and/or organizational dependency on the user enterprise, he or she should be regarded as being formally an employee of that enterprise. Court decisions in many countries already point in this direction. (3) Yes, care must however be taken that the prescriptions are not restricting people who are trying to sell their services individually and in the form of an informal undertaking. (4) Yes. (5) Yes. (6) If the instrument is in the form of a Convention only, no criteria should be mentioned. In any other situation (a Recommendation or a Convention supplemented by a Recommendation) the Recommendation can provide for such criteria.

Spain. (3) Yes, although it should be mentioned that the activity of the subcontractor is to be carried out by its own workers. (4) No, the concept of "intermediary" does not include temporary work enterprises, which alone are authorized by law to supply workers. (5) Spanish labour law does not use such terms as "substantial dependency", which would create major problems in practice. (6) The criteria used here are a valid means of identifying a user enterprise. (6)(h) Also: "the extent to which the user enterprise is responsible for occupational health and safety protection".

UGT: Yes, for all definitions proposed except "intermediary", which should be deleted since it is not a characteristic of labour law. (6) The Convention should define criteria of economic and/or organizational dependency. (6)(h) Also: possible intervention in the procedures for selecting contract workers; medical examinations, health and safety; social benefits borne by the user enterprise.

Sudan. (3) The proposed definition is incomplete, the words "which offers this work or service to another party" should be added.

Swaziland. (3) It should mean a service provided to a user enterprise.

Switzerland. (1) The usefulness of this definition is hardly visible. The definition of "user enterprise" is more important. (2) The definition of "contract worker" should include the element of subordination, which is a principle element in determining an employment relationship. (2) According to social insurance law in Switzerland, (a)(i) and (b) are not compatible, since those who find themselves "in a situation of substantial economic and/or organizational dependency" are considered as employees of a user enterprise. Members should be left to define "the situation of substantial economic and/or organizational dependency". According to social insurance regulations in Switzerland, the criterion for distinguishing a dependent from an independent profit-making activity is the following: work in a situation of subordination and without specific entrepreneurial risks. (5) This paragraph adds more flexibility and can contribute to a wider application of the instrument. (6) This list of criteria makes it possible to determine substantial dependency.

ASM: (1) Yes, in principle, although the meaning of the word "labour" remains unclear. (2)(b) The term "substantial dependency" should be more precisely defined. (4) Yes. (6) This list should not be exhaustive.

CP: (6) See reply of ASM.

Swissfashion: (2)(a)(ii) Yes. (3) Yes. (4) The definition of "intermediary" should not be associated with subcontracting.

CSC/CNG: Yes.

VSA: Yes, in principle. (3) In line with Paragraph (2)(a)(i), the wording of this provision should be broadened, to read as follows: "who contracts to perform work or provide a service or to have work performed or a service provided".

Thailand. (2)(a)(i) No, a "subcontractor" does not perform the work himself/herself. (4) Yes. Nevertheless, the phrase "except where the intermediary is formally the employer of this worker" should be deleted since it is unnecessary here. (6)(e), (f), (g) Yes. Whenever expressed or implied in exercising supervisory authority, the contract workers should be deemed to be in a condition of substantial economic and/or organizational dependency on the user enterprise. Such criteria should apply to job contracting and labour supply contracting.

Turkey. (2)(a), (b) The definition of "contract worker" should not include subcontractors as they would be independent under Turkey's national legislation. The instrument should also define the terms "economic dependency" and "organizational dependency". (6) Yes, if compatible with (2) above.

TISK: (1), (2) Yes. It should be defined as denoting a wage worker of a subcontractor who works or provides services for a user enterprise. (3), (4) Yes. (5) No, this should be left to national regulations. (6)(a)-(g) the determination of these criteria internationally does not seem to be a pragmatic and efficient method.

TÜRK-IS: (1), (3)-(6) Yes.

CPTUT: (1), (2), (5), (6) Yes. (3) The term "subcontractor" should distinguish the subcontractor and labour subcontractor. (4) The term "intermediary" should be defined to mean any person who engages workers with no formally established employment relationship to have work performed.

United Arab Emirates. (6)(e) No, because supervision falls on the user enterprise. (6)(f) No, as the determination of working time falls on the party using workers to provide services. (6)(g) No, as this is the authority of the original employer. (6)(h) The relationship between the user enterprise and the party providing services should be determined in order to make clear that workers are subject to the user enterprise not to the party to whom services are provided.

United Kingdom. (5), (6) No. Employers and employees are best placed to consider the criteria and agree on terms and conditions of employment.

CBI: In the United Kingdom contractors have a different status and therefore different protection rights from those who can be described as employees. So far as this question refers to those who are employed by somebody other than the user enterprise, then they clearly would have protection as employees of that other body. Clearly, therefore, there would be no reason to seek to ascribe further protection to them. Much of what is contained in paragraph (6) is similar to the factors which are assessed in the United Kingdom when determining whether or not a person is an employee. However, the CBI does not see the benefit of linking these factors in the way suggested by subparagraphs (5), (6) and (2)(b).

TUC: (1), (2) Yes. (3) A distinction should be made between the terms "subcontractor", as defined in this paragraph, and the "labour subcontractor" who supplies contract workers. (4) Mention should be made here of the fact that the intermediary acts for the benefit of, or on behalf of, or under the supervision or control of, or with the resources (mainly or partly) of, a user enterprise. (5) The Convention should emphasize the *de facto* nature of the relationship as the determinant for establishing the existence of dependence and, while not attempting to lay down specific and detailed criteria for making such determination (which may be included in the Recommendation), should oblige ratifying governments to apply the general criteria based on the concept of dependence when determining if the protection of an employment relationship should apply to contract workers. (6)(a), (c), (e)-(g) Yes. (b) The TUC would caution against assessing the ownership of tools as an indication of independence. Many of the tens of thousands of building workers in the United Kingdom trapped into bogus self-employment (the "lump") through labour-only subcontracting own their own tools and are required by the user enterprise to provide them, though they remain in a position of total dependency on the user enterprise. Many employers seek to avoid their legal duty to provide health and safety equipment, free of charge, through these means. (d) In some circumstances the subcontractor may provide training without diminishing the dependency of the contract worker on the user enterprise. (h) Also, criteria which could indicate the underlying economic dependency of the contract worker's relationship with the user enterprise, for example (i) how the contract worker is paid — by hour, week, month or by result; (ii) the significance of investment in capital, materials and, in some circumstances, tools; (iii) the extent to which the user enterprise controls the worker's earning opportunities by providing materials, resources or markets; (iv) who pays for business costs including travel? and (v) above all, particularly in view of the need to deal with bogus self-employment as a means for employers to escape social and tax obligations, who makes the fiscal and social security payments?

United States. (1) The United States Government would prefer that the statement end after the word "person". (2)(a)(i)-(iii) It is essential to define "contract worker" so as to distinguish such individuals who are employees from those who are bona fide independent subcontractors. In general, an employee, as distinguished from an independent contractor who is engaged in a business of his or her own, is one who "follows the usual path of an employee" and is dependent on the business which he or she serves. The factors which the United States Supreme Court has considered significant — although no single one is regarded as decisive — are: (i) the extent to which the services in question are an integral part of the employer's business; (ii) the permanency of the relationship; (iii) the amount of the individual's investment in facilities and equipment; (iv) the individual opportunities for profit and loss; (v) the amount of initiative, judgement or foresight in open-market competition with others required for the success of the claimed independent enterprise. (5) The criteria should be set forth in national laws, regulations and court decisions.

USCIB: (1) Yes. A worker with the status of employee enjoys now, and will continue to enjoy even after adoption of any ILO instrument, a higher level of protection and benefits than a contract worker. (2)(a)(i) Yes. (2)(a)(ii) No. This worker should be classified as an employee of the subcontractor, who is the employer. (2)(a)(iii) This depends on the distinction drawn in (2)(b), (4). If the intermediary is the formal employer of the worker, the worker is the intermediary's employee and is not a contract worker. If the intermediary merely arranges for the worker to supply services to the user but does not employ the worker, the worker is a contract worker or employee of the user, depending on whether or not there is a contract of employment with the user. (2)(b) No, economic and/or organizational dependency should not be a determining factor. A poor, economically deprived street sweeper might be economically dependent on any single home owner on the street he keeps clean, yet he may need protection against exploitation; while a highly compensated attorney or accountant might become economically dependent on a major client, but needs no protection. (3) Yes, provided that the definition concludes with the phrase "..., except in so far as the natural person might be classified as an employee". (4) Yes. It is important to retain the distinction (and thereby to avoid confusion) between what would be the subject of this instrument and what will be the subject of a revised Convention No. 96. (5) Yes, if the element of economic dependency is retained. (6)(a) No, firms, particularly in this time of change, are altering the composition of what they do. A firm's "normal" activities today might, and in many cases will have to, differ from its "normal" activities next year. This process is necessary and healthy for the survival of firms and the growth of the economy. Firms should not be impeded from making rational decisions about what goods and services they produce by externally imposed definitions of their "normal" activities. (6)(b) Yes, provided that the worker is not already an employee of a subcontractor or intermediary. For example, a temporary worker who is an employee of a temporary employment agency may use the machinery and equipment of the user firm to which he or she is assigned. This should not result in his or her being classified as a contract worker for the user enterprise rather than as an employee of the temporary work agency. (6)(d)-(f) Yes, with the same proviso as for (6)(b). (6)(g) No, this criterion is too general. In all commercial relationships the recipient of a service or goods has, subject to contract and law, a power of discipline over the service or goods supplier.

AFL-CIO: The AFL-CIO agrees with the proposed definitions and with the need to retain flexibility in determining the criteria which establish economic dependency in any given national setting. In the United States the destruction of the traditional employment relationship has taken many forms. In some industries and locations user enterprises retain labour contractors to provide services. These contractors in turn hire acknowledged employees. However, notwithstanding the fact that in judicial terms the workers have an employer, they remain economically dependent upon the user enterprise which continues to control their terms and conditions of employment. The user enterprise, through its service agreement with the intermediary employer, or the labour contractor, determines whether the juridically acknowledged employer has the means to comply with statutory labour standards or to enhance the workers' conditions. In addition, there is increasing pressure to convert employees into independent contractors who are not treated as employees of any entities. This has the effect of removing such persons from the web of existing statutory protection and labour standards. The most important perspective in determining whether an individual should be treated as an employee, and in determining whether the user enterprise or another should be held legally responsible for the individual who provides service, is that of the worker. Formal attributes of entrepreneurial independence are often without substance when considered in light of the worker's concrete circumstances. Thus, agricultural workers who are treated as independent contractors — free to harvest on a piece-rate basis as much acreage as they or their family can manage — are inherently dependent on the grower or owner of the land which they harvest. The Recommendation should provide further guidance on the circumstances in which in given sectors the contractor or worker will be deemed economically dependent on the user enterprise and the latter legally responsible.

Uruguay. Worker sector: (2)(a)(i)-(iii) Yes, as long as there is an independent relationship. (2)(b) Yes. (3)-(5) Yes. (6) Yes.

Yemen. (4) Yes, but it should not be mentioned in the instrument, because this concept is incompatible with Yemen's legislation, which prevents any natural or legal person from supplying workers to employers. (2), (5), (6) Not to be mentioned in the instrument.

Zimbabwe. (1) Yes, but this should be differentiated from permanent labour. (2)(a) To be left as a general definition and not to be qualified. (2)(b) It is not necessary: if one depends on the user enterprise, one is a formal employee of the user enterprise. (3) Yes, provided there is a clear distinction with (2) above. (6) These criteria are important for assessing if a person is a contract worker or not.

Extensive coverage has been given to this question in the replies received. These replies, the majority of which are in the affirmative, reveal that, in general, the definitions proposed by the Office have captured the major characteristics of the phenomenon. At the same time, the content of many replies has also shown clearly that the definition of contract labour should be more flexible, in order to take appropriate account of the multiplicity of the patterns and practices of contract labour, as established throughout the world. The Office believes that this is a necessary precondition for having the instrument(s) adopted and (in the case of a Convention) widely ratified.

In the light of this, the Office is of the opinion that paragraphs (1) and (2) of this question can be combined and redrafted in order to provide for a more universal, widely acceptable and thus applicable definition of "contract labour" for both the proposed Convention (*Point 5*) and Recommendation (*Point 16*).

Changes have been made as regards the reference to "substantial economic and/or organizational dependency" (paragraph (2) (b) of this question). The criterion of dependency is of primary importance for the definition of contract labour. It determines those situations in the relationships between contract workers and user enterprises which require intervention to protect the workers concerned and to eliminate possible abuses. However, the reference to "economic and/or organizational" aspects of such dependency can generate certain problems in respect of their interpretation since (i) so far, these concepts have as yet been recognised by the national law and practice of only a very limited number of countries; and (ii) as a number of replies have emphasised, organizational and/or economic dependency links are also characteristic of a commercial relationship and therefore cannot be used as a decisive criterion for delineating contract labour. The Office has taken account of these views and removed the words "economic and/or organizational" from *Point 5* of the proposed Convention and paragraph (1) of *Point 16* of the Recommendation. Secondly, the Office has also inserted the word "subordination" into the definition of "contract labour" since this traditional and widely accepted characteristic of an employment relationship, mentioned in a number of replies, provides for a better understanding of the phenomenon under regulation. To make quite clear the kind of dependency being referred to, the words "where these conditions are similar to those that characterize an employment relationship under national law and practice" have been inserted in the definition.

The Office has also redrafted the list of criteria that could be considered by a Member in determining whether a worker is in a condition of dependency on and/or subordination to a user enterprise, as provided for in paragraph (6) of this question, in line with the changes to the definition of "contract labour" described above. The Office is of the opinion that this list, which is actually derived from the legislation and case law criteria applied in different countries, can only be of recommendatory character, and therefore proposes to retain it in the Proposed Conclusions with a view to a Recommendation (*Point 16*).

As regards paragraphs (3) and (4) of this question, the Office has made a number of changes in the drafting with a view to taking account of various opinions expressed in the replies and to making the definitions sufficiently flexible, and proposes to include them in the Proposed Conclusions with a view to a Recommendation (*Point 16*), since the terms "subcontractor" and "intermediary", as defined in these paragraphs, are used only in this proposed instrument.

V. Scope

Qu. 6

(1) Should the instrument or instruments apply to all branches of economic activity?

(2) If not, should the instrument or instruments apply to particular branches of economic activity? If so, please specify the branches?

(3) In the case of a Convention, should it provide that a Member may exclude from its scope particular branches of economic activity? If so, should the Member be required to indicate in its first report under article 22 of the Constitution of the International Labour Organization the branch or branches excluded?

Paragraph (1):

Total number of replies: 76.

Affirmative: 55. Argentina, Austria, Bahamas, Barbados, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, Comoros, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Germany, Haiti, Italy, Jordan, Kenya, Kuwait, Hungary, Lithuania, Malaysia, Mali, Malta, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Panama, Peru, Philippines, Portugal, Romania, South Africa, Spain, Sudan, Suriname, Swaziland, Switzerland, Thailand, Turkey, United Kingdom, Uruguay, Yemen, Zimbabwe.

Negative: 15. Bahrain, Belarus, Colombia, Costa Rica, Cuba, Gabon, Ghana, Indonesia, Mauritius, Mexico, Oman, Pakistan, Qatar, Sri Lanka, United Arab Emirates.

Other: 6. Australia, China, Greece, Japan, Saudi Arabia, United States.

Paragraph (2):

Total number of replies: 14.

Affirmative: 9. Bahrain, China, Colombia, Cuba, Gabon, Mexico, Pakistan, Oman, United Arab Emirates.

Negative: 2. Cambodia, El Salvador.

Other: 3. Belgium, Mauritius, Zimbabwe.

Paragraph (3):

Total number of replies: 62.

Affirmative: 52. Australia, Austria, Bahamas, Barbados, Belgium, Brazil, Bulgaria, Burundi, Cambodia, Canada, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Egypt, Estonia, France, Finland, Gabon, Ghana, Greece, Italy, Jordan, Kenya, Lithuania, Malta, Mauritius, Mexico, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Philippines, Portugal, Qatar, Romania, Slovakia, Spain, Sri Lanka, Suriname, Switzerland, Thailand, United Arab Emirates, United Kingdom, Uruguay.

Negative: 9. Benin, Denmark, El Salvador, Haiti, Indonesia, Germany, South Africa, Swaziland, Zimbabwe.

Other: 1. Malaysia.

Australia. (1) This should be left to individual Members to decide. (3) Yes. The requirement to report must be flexible and allow for additions or changes to the exemptions at a later date, and should not be limited to the first report.

Austria. BAK: (1) Yes. (3) No.

Bahrain. (1) Not necessary. (2) Though it may be necessary to apply the instrument(s) to the trade, industrial and agricultural sectors, or even to the social, educational, health or tourism sectors, it is not necessary to apply the instrument(s) to the financial and banking activities as both require full experience and confidence.

Belgium. (2)(3) Yes, but Members should be given the faculty of excluding certain branches from the scope of the instrument, provided they motivate such exclusion. They should be given the possibility of establishing ad hoc regulations relating to branches where special practices or particular problems exist so that they can grant better protection to workers and organize a sound labour market in the general interest of workers and employers.

Brazil. CNC: (1) (3) Yes.

Colombia. (2) Yes, such as the public sector and industry.

Cuba. (2) Yes, it would be convenient to exclude from the instrument(s) such branches as health and education.

Costa Rica. (1) No. In the event that contract labour becomes an acceptable practice to be regulated by an international instrument, the sectors to which the instrument applies should be clearly specified; it is less likely that it will function efficiently for all sectors. (2) It would appear that countries which practise contract labour have certain features in common which make this form of work viable. Provision should therefore be made for an indication of the sectors of economic activity to which the provisions would apply, in accordance with the specific conditions and experiences of each Member. (3) Yes. At all events the instrument should stipulate precisely that each country should regulate in its legislation the scope of this kind of work and other conditions under which it is used, without such conditions being less advantageous or more restrictive than those granted generally by the international instrument.

UCCAEP: (1) Not necessary. (3) Yes.

Finland. TT, LTK, FFE: (1) There is no foundation whatsoever for treating different branches of economic activity differently.

SAK, STTK, AKAVA: (1) Yes. (2) Certain branches could be excluded from the scope of the instrument provided that the foundations for such an exclusion are determined together with the labour market organizations, and that the excluded branches are assured of some minimum level of security, in accordance with the Convention. (3) Yes.

Gabon. (2) Private sector.

Germany. (3) No, this could result in unjustifiable discrepancies of application in the various ratifying States. That is precisely what a Convention on the legal status of employed persons should avoid.

DGB: Yes.

Ghana. (2) Construction, agriculture, wholesale and retail trade, restaurants and hotels, transport, storage and communication, financing, insurance, real estate and business services, and the community, social and personal services.

TUC: (1) Yes. (2) (3) No.

Greece. (1) Yes, except the activities of the central public administration services.

GCGW: (1) Yes. (2) If the instrument applies to specific branches of economic activity, technical work and the shipbuilding industry should not be excluded from the scope of application. (3) Yes.

Hungary. Employer organizations: (1) A Convention should pertain to specified economic activities and branches of industry, allowing for a possibility of change in different countries.

Indonesia. (1) No, it should not be applied to all branches of economic activity. (2) The preferable branches: construction, agriculture, plantations, transportation, cleaning and security, and non-permanent/social work. (3) No, a Convention and/or a Recommendation should only provide for particular branches of economic activity.

Iraq. GCTU: (1) (3) Yes.

Israel. Histadrut: (1) Yes. (3) In the case of a Convention, no provision should be made allowing a Member to exclude from its scope particular branches of economic activity. If such a provision is included, it should only be for the reason that a Member affords contract workers protection at least equivalent to that afforded by the Convention.

Japan. Home work should be excluded. See under Question 5.

NIKKEIREN: (1) (3) Yes.

JTUC-RENGO: (1) (2) In principle, it should be applied to all branches of economic activities. (3) Exceptions should be based on labour-management consultations.

ZENROREN: (1) Yes. (3) No.

Jordan. FJCC: Yes.

ACI: (1) As long as it is an economic activity. (3) No.

GFJTU: Yes.

Mauritius. (2) The Convention should allow a Member ratifying it to exclude from its application particular branches of economic activity in respect of which special problems a substantive nature may arise. This should be done after consultation with the representative organizations of employers and workers concerned.

Mexico. (2) They should apply to the informal sector, business and industry — for example, manufacturing, in which many auxiliary activities such as cleaning and maintenance are carried out on a contract basis. (3) Yes, the instruments should expressly exclude the public administration.

Netherlands. VNO-NCW: (1) (3) Yes. (2) No.

FNV, CNV, MHP: (1) Yes. (3) No, unless it provides that a Member excluding one or more branches of economic activity are required to provide protection at least equivalent to that afforded by the instrument(s).

New Zealand. (1)-(3) See *General observations.* New Zealand does not consider that different arrangements should apply to any particular group of labour market.

Oman. (2) Yes, branches where the work performed requires secrecy for national security reasons.

Pakistan. Industrial, commercial and construction enterprises employing 20 or more workers.

Panama. (1) Yes. If there are exclusions, employers may be able to elude their responsibilities; given the flexibility of mercantile legislation, various activities can be carried out by an enterprise either separately or on a unified basis. (3) Yes, the Convention should allow a Member to decide which exclusions it wishes to make, when necessary.

Poland. Solidarnosc: (1) Yes.

Qatar. (2) For example, agriculture, construction, restaurants, leisure places, offshore oil installations and inland transport.

Rwanda. CESTRAR: (1) Yes. (2) While excluding particular branches of economic activity, the governments should at least give as a reason the existence of protection at least equivalent to that afforded by a Convention.

Saudi Arabia. (1) The instrument should apply to the activities covered by labour regulations.

South Africa. (3) No. However, if provision is to be made to permit the exclusion of particular branches of economic activity, the instrument should indicate the criteria for such exclusion. This might include (a) that very few contract workers are employed in the sector or sectors concerned; or (b) that those who are employed in the sector will enjoy equivalent protection. An alternative approach would be for the Convention to apply to all sectors where there is a significant levels of employment of contract workers.

BSA: (1) (3) Yes. (2) To be left to each Member to determine.

Spain. (3) Yes, this would give greater flexibility to the Convention and facilitate its ratification.

UGT: (1) Yes. (3) No.

Sri Lanka. (2) Where contract labour is resorted to.

Switzerland. (1) Yes. However, the public sector might be excluded in the case of a Recommendation. (3) Yes. In the case of a Convention, Members should be allowed to exclude certain form of contract labour.

CP: (1) Yes, with necessary flexibility.
Swissfashion: (2) Textile and garments industries.
CSC/CNG: (1) Yes. (3) No.
VSA: (1) Yes. (3) No.

Turkey. TISK: (1) Yes. (3) Yes.
TÜRK-IS: (1) Yes. (3) No.

United Arab Emirates. (2) Building, construction and services.

United Kingdom. CBI: The CBI has had a mixed response on this issue. If, against its wishes, an instrument were devised, it would have to consider the matter further as ILO intentions become clearer. One organization, the Chamber of Shipping, expressed the view that it would be inappropriate for any ILO instrument on contract labour which is of general application to be applied to seafarers. They feel that, with the 50 instruments relating specifically to seafaring that have been adopted by the ILO, they are well covered.

TUC: (1) Yes.

United States. (1)-(3) A Member should be able to exclude certain branches of economic activity from the scope of the instrument(s), in accordance with national law and practice.

USCIB: (1) No, it would be unnecessary and meaningless to apply an instrument to professional, skilled and other types of contract workers who are adequately compensated and able to manage successfully their work situations. (2) The instrument should apply to narrowly defined situations where exploitation and abuse are frequent, e.g. the user of labour gangs and contract-labour providers in developing countries. (3) Yes, a Member should be able to exclude particular branches of economic activity. However, Members should not be required to indicate which branches are excluded. For any Member, the composition of branches included and excluded may change over time.

AFL-CIO: (1) Yes. The protection should apply to all branches of economic activity including where a public entity is the user enterprise. In the AFL-CIO's experience, there is nothing inherently different about the potential for exploitation or abuse of contract workers where the Government is the ultimate user or beneficiary of their work. Indeed, recent years have seen an expansion of the use of contract labour in the public sector.

Uruguay. Worker sector: (1) Yes. (2) (3) No.

Zimbabwe. (1) Yes, but the words "branches of economic activity" could be too restrictive in the Zimbabwean situation. (3) No.

The majority of replies to paragraphs (1) and (3) of this question were in the affirmative. Several replies expressed, however, the view that the scope of application of the instruments(s) should be left to the discretion of member States. In some other replies the idea has been put forward that the instrument(s) apply to particular branches of economic activity.

As the majority of replies appear to support the principle that the instrument(s) should be general in coverage, subject to the possibility of excluding certain branches of economic activity or certain categories of workers, the Proposed Conclusions have been drafted accordingly *(Points 6-8)*.

In drafting *Point 6* of the Proposed Conclusions, the Office has also given due consideration to the fact that the present session of the Conference will also examine, under the single-discussion procedure, an item on private employment agencies with a view to adopting a Convention that would revise the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). In this respect, a draft Convention has been submitted to the Conference which inter alia would address the situation of workers who are employed by private employment agencies *with a view to making them available to a natural or legal third party which assigns their tasks and supervises the execution of these tasks.*[1] In practice, this wording refers essentially to temporary work agencies. In light of the definition of "contract labour" that is proposed in *Point 5* of the Proposed Conclusions in the present report, it would seem that the workers concerned by such arrangements would fall within the coverage of both the aforementioned proposed Convention and the present Proposed Conclusions (which would also cover many other groups of workers that are not covered by the proposed Convention on private employment agencies). In order to avoid overlap with the latter Convention (which would entail the risk of the same group of workers being covered differently by two different standards) the Office has included in *Point 6* a sentence which would exclude these workers from the scope of application of a possible instrument(s) on contract labour.

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[1] See article 1 (1) (b) of the proposed Convention concerning private employment agencies, in Report IV (2) submitted to the 85th Session (1997) of the Conference.

Qu. 7 ***Should the instrument or instruments provide that its or their provisions should not affect more favourable provisions in other international instruments applicable to the workers concerned?***

Total number of replies: 75.

Affirmative: 71. Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Mexico, Myanmar, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Peru, Philippines, Portugal, Qatar, Romania, Panama, Saudi Arabia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, Uruguay, Zimbabwe.

Negative: 1. Yemen.

Other: 3. Germany, Japan, United States.

Austria. BAK: Yes.

Brazil. The instrument should also refer to other international instruments in force.
CNA, CNC: Yes.

Costa Rica. UCCAEP: Yes.

Czech Republic. CMK-OS: Contract labour as a form of employment should have a supplementary character besides the normal employment relationship and should be limited to certain branches of economic activities — where this is justified from the economic and organizational standpoint (services, specialized fields of activity). The State should have the possibility to prohibit by law contract labour in certain branches for specific reasons inherent in the activity itself, such as hazardous work).

El Salvador. In keeping with paragraph 8 of article 19 of the ILO Constitution.

Finland. TT, LTK, FFE: The reference to international instruments is irrelevant, since they can ensure workers' rights only if ratified.
SAK, STTK, AKAVA: Yes.

Germany. This is not necessary in the light of article 19, subparagraph 8, of the ILO Constitution.
DGB: Yes.

Greece. GCGW: Yes.

Iraq. GCTU: Yes.

Israel. Histadrut: The widest possible scope should be sought in order to provide the greatest coverage to the largest number of persons.

Japan. These provisions need to be clarified.
NIKKEIREN: Not necessary. The proposed instrument should not include provisions already contained in other international instruments.
JTUC-RENGO, ZENROREN: Yes.

Jordan. FJCC: Yes.
ACI: The legally signed contract should be observed.
GFJTU: Yes.

Netherlands. VNO-NCW: Yes.

FNV, CNV, MHP: Yes.

New Zealand. See *General observations.*

Poland. Solidarnosc: Yes.

Rwanda. CESTRAR: Yes.

South Africa. BSA: Yes.

Spain. UGT: Yes.

Switzerland. CSC/CNG: Yes.
VSA: Yes.

Turkey. TISK: Yes.
TÜRK-IS, CPTUT: Yes.

United Kingdom. CBI: Yes.
TUC: Yes.

United States. Any "more favourable provisions" in other Conventions would have to be examined on an individual basis to determine the effect on them of the instrument(s) under discussion here.
USCIB: The instrument should not address subjects that are already adequately treated in other instruments.
AFL-CIO: Yes.

Uruguay. Worker sector: This provision is unnecessary as this principle is not only contained in the ILO Constitution but underlies all its standard-setting work.

As the vast majority of replies to this question were in the affirmative, the Office has found it appropriate to retain the wording of this question and include it in the Proposed Conclusions with a view to a Convention *(Point 14).*

VI. Content of the Instrument or Instruments

Qu. 8

Should the instrument or instruments provide that Members should take appropriate measures with a view to ensuring that contract workers enjoy adequate protection with respect at least to the following issues:

(a) the right to organize and to bargain collectively?

(b) protection against discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction or social origin?

(c) minimum age?

(d) remuneration?

(e) working time and other conditions of work?

(f) occupational safety and health?

(g) maternity protection?

(h) social security coverage, where it exists?

(i) compensation in case of occupational accident or disease?

(j) other (please specify)?

Subparagraph (a):

Total number of replies: 72.

Affirmative: 67. Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Malaysia, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, Uruguay, Yemen, Zimbabwe.

Negative: 3. Kuwait, Japan, United States.

Other: 2. Germany, United Kingdom.

Subparagraph (b):

Total number of replies: 76.

Affirmative: 73. Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Namibia, Mexico, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, United States, Uruguay, Yemen, Zimbabwe.

Negative: 1. Japan.

Other: 2. Myanmar, United Kingdom.

Subparagraph (c):

Total number of replies: 75.

Affirmative: 71. Argentina, Austria, Bahamas, Bahrain, Barbados, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Mexico, Namibia, Netherlands, Nicaragua, Norway, Niger, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Thailand, Turkey, United States, Uruguay, Yemen, Zimbabwe.

Negative: 2. Australia, Japan.

Other: 2. Myanmar, United Kingdom.

Subparagraph (d):

Total number of replies: 72.

Affirmative: 66. Argentina, Austria, Bahamas, Bahrain, Barbados, Belgium, Benin, Brazil, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, United States, Uruguay, Yemen, Zimbabwe.

Negative: 6. Australia, Bulgaria, Japan, Malaysia, Switzerland, United Kingdom.

Subparagraph (e):

Total number of replies: 76.

Affirmative: 73. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, United States, Uruguay, Yemen, Zimbabwe.

Negative: 3. Australia, Japan, United Kingdom.

Subparagraph (f):

Total number of replies: 75.

Affirmative: 73. Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Germany, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, United States, United Kingdom, Uruguay, Yemen, Zimbabwe

Negative: 2. Japan, Switzerland.

Subparagraph (g):

Total number of replies: 72.

Affirmative: 69. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, United States, Uruguay, Zimbabwe.

Negative: 2. Australia, Japan.

Other: 1. United Kingdom.

Subparagraph (h):

Total number of replies: 72.

Affirmative: 69. Argentina, Austria, Bahamas, Bahrain, Barbados, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Japan, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Switzerland, Turkey, Thailand, United Arab Emirates, United States, Uruguay, Yemen, Zimbabwe.

Negative: 1. Australia.

Other: 2. Norway, United Kingdom.

Subparagraph (i):

Total number of replies: 69.

Affirmative: 68. Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Malaysia, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Philippines, Portugal, Peru, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, United States, Uruguay, Yemen.

Negative: 1. Japan.

Subparagraph (j):

Total number of replies: 17.

Australia. (b) Yes. However, we would wish to include an exception based on the inherent requirements of the position, to avoid placing unduly harsh requirements on contracting parties. Other grounds that could be considered for inclusion with respect to protection against discrimination in employment and occupation are disability, sexual preference, age, medical record, and criminal record. (c) No. Given the wide range of contractual relationships covered by the proposed instrument, it is not suitable for inclusion. (d) (e) These are matters for consideration by the contractual parties themselves. (f) Yes. However, it should only be expressed as a general duty to observe occupational health and safety obligations, consistent with national law and practice. (g) No. It is inappropriate for the user enterprise to observe identical maternity obligations (for example, paid leave) as are undertaken in respect of regular employees. (i) Yes. However, the determination of the circumstance in which compensation should be awarded should be left to Members, in consistency with national law and practice.

Austria. Yes, in principle. With regard to manpower hire/supply, i.e. labour-only contracting (of the employees of a "contractor" — described in the draft report as "subcontractor" — and in job placement operations), particular attention should be paid to the following: (i) hiring/supply only with the worker's consent; (ii) the hire firm is obliged to pay remuneration in respect of periods during which the contract worker has not been on supply; (iii) the remuneration is aligned with any higher, collectively agreed remuneration applicable in the user enterprise; (iv) compliance with worker protection and social security regulations; (v) assistance by the firm's workers' representatives. In respect of employment assimilable to the status of "employee" (by direct "contractors" described in the draft raport as "subcontractors"), provision should be made in particular for: (a) appropriate remuneration; (b) social insurance protection; (c) judicial enforcement of entitlements by special industrial tribunals, wherever they exist. In both cases: assistance by workers' organizations.

BAK: Yes. (j) The following areas of protection should be added: loss of earnings insurance (in the event of leave, sickness, major personal reasons affecting the employee); assistance by the enterprise's workers' representative.

Bahrain. (a) Yes. It should be through or under the supervision of the competent government authority — or the latter should at least be informed of the collective bargaining — and within the limits provided for in national legislation.

Barbados. (j) Also, protection of remuneration and type of deductions from wages; unfair dismissal.

Belgium. All workers, whether supplied to a user enterprise or working under the authority of a contractor are to be protected under the general rules that govern the situation of all employees. In this respect inspiration may be drawn from other ILO instruments, in particular the instruments concerning homework. However, these rights can be recognized only to the extent that such workers are dependent employees. The instruments could not apply to workers who actually are self-employed workers, however economically dependent they may be.

Brazil. (j) Also, access of contract workers to machinery and instruments for the defence and protection of their rights.

CNA, CNL: Yes.

Canada. (a)-(e) Yes. However, the meaning of "adequate protection" should be clarified. As regards remuneration, for example, would "adequate protection" require parity with the remuneration of employees of the user enterprise — which would be detrimental to the practice of subcontracting; and does "adequate protection" take into account the fact that tax and other obligations may vary according to whether a worker is an "employee" or not.

Costa Rica. (j) Any other issue necessary to ensure proper protection should be included here.

UCCAEP: They should enjoy all the rights and prerogatives — as well as the responsibilities and obligations — of the other workers of the user enterprise, and not only a capricious set of minimum rights.

Czech Republic. SPD-ČR, KPZS-ČR: (a) (d) (i) No.

Denmark. (d) Cash allowances may be determined in relation to working time or income, cf. Article 7 of Convention No. 175. This, however, does not apply to the determination of basic wages. (j) Also: the right to documentation in writing for the employment relationship; the same rights in relation to sickness as other employees, in accordance with national law or practice.

LO: (a)-(i) Yes, as a minimum.

Estonia. CEIE, ECEU: (a)-(f) Yes.

AETU: (a)-(g) Yes. Subparagraph (i) should require a separate agreement.

Ethiopia. Given the nature of the work, some conditions such as maternity protection could be a bit difficult to implement.

Finland. (b) Yes. Protection against discrimination on the basis of age could be added.

TT, LTK, FFE: (a) (b) Yes, as regards the relationship between employer and employees.

TT, LTK: (c)-(i) No. Such provisions are required for the relationships between independent entrepreneurs. Where formal employees are concerned, assessment should be based on the relationship between the employee and the employer and that employer's field of operations, regardless of whether the employee in question is a contract worker or some other type of employee.

FFE: An international instrument should not require Members to take specific measures in order to protect those working in a contract relationship other than an ordinary employment relationship.

SAK, STTK, AKAVA: (a)-(i) Yes.

France. See under Question 5 (1). The subcontractor, as well as the employer, should respect labour legislation. (j) If this list is made up, it might also include "paid leave, occupational medicine, professional training".

Germany. (a) Freedom of association and the right to collective bargaining, to the extent that it proves possible for the instrument not to cover the legal status of "genuine" selfemployed persons (see reply to Question 5). (g) If persons engaging in contract labour are to be considered as *employees*, the German Maternity Protection Act applies. It gives protection to every woman in employment. Hence, detailed provisions on maternity protection can be dispensed with. It would, however, be conceivable for some clarification to be given to the effect that the national maternity protection also applies to contract workers for the purposes of the instrument. (h) According to German domestic law, social insurance is associated with the concept of employment. As a rule, once a person takes up remunerated employment, health, nursing, pension and unemployment insurance becomes compulsory. If an employment relationship exists and inasmuch as other conditions are met, contributory insurance is statutory irrespective of contract structure and the parties' wishes. The decisive factors determining whether an employment relationship exists for social insurance purposes are the actual relations and circumstances of the individual case — the general profile of the activity and occupational position. A number of self-employed persons are also partially incorporated into individual branches of the social insurance system. The decisive factor in this respect is not economic but personal dependency. Otherwise, the scope of social insurance protection would undergo a considerable extension to encompass the self-employed. (i) In accordance with national law (article 539, subparagraph 1, No. 1, of the Reich Insurance Code), all employees shall be affiliated to the statutory accident insurance (just as for VI 8 h). (j) Given the broad scope of application and imprecise definitions, it would appear that a general provision granting the group of persons affected by the Convention appropriate protection in respect of all other working conditions would be too far-reaching. However, similar to existing international commitments, protection standards should be included regarding leave (convalescence) and, at the very least, periods of notice in the event of dismissal.

BDA: No. The complex of problems addressed by the report and questionnaire emerges clearly in connection with the contents proposed here: the listed areas are generally the subject of labour law. In countries in which such texts exist, they are applied to *employees*. The issue of extending their scope of application to "contract workers" shows particularly clearly that the questionnaire does not deal with any actual labour law theme. Rather, it is aimed specifically at the extension of labour law provisions to persons who, hitherto, were not assimilated to the concept of "employee".

DGB: Yes.

Ghana. (j) Also, overtime payment.

Greece. GCGW: Yes.

Haiti. (j) Also: occupational training perfection; periodical change of place of work.

Hungary. Employer organizations: (a) Not necessary.
Trade unions: Yes.

Iraq. GFTU: Yes.

Israel. Histadrut: (a)-(i) Yes. (j) Also, just dismissal, sick pay, annual paid leave, severance pay, medical insurance coverage.

Japan. Legislation on contract labour differs in each member State and it is not appropriate to establish uniform protection in an international instrument, especially as the right to organize and bargain collectively is provided for in ILO Conventions Nos. 87 and 98. The contingent of workers and their protection should be based on national law in conformity with these Conventions. However, as long as it does not impose a single form of social insurance on all types of contract workers, we do not have any objection to a provision on social security.

NIKKEIREN: Adequate protection of contract workers is essential. However, because of differences in regulations between member States, the instrument should only point out the importance of protection, while leaving concrete measures to each country. Therefore, (a)-(i) should be regarded as examples.

JTUC-RENGO: Contract workers' fundamental labour rights should be guaranteed in the same way as those of regular full-time workers.

ZENROREN: Yes. The instrument(s) should also specify that a user enterprise is obliged to bargain collectively with the trade union to which contract workers belong, and to guarantee contract workers equal collective rights in the workplace with directly employed workers. (j) Cancellation of a contract should not be permitted without good and sufficient reason, as is the case with dismissals. Equal treatment between contract workers and employees of the user enterprises should be clearly spelled out in the instrument(s), including treatment in respect of collective and representation rights.

Jordan. FJCC: No.

ACI: (a)-(c) Yes. (d) Yes, in accordance with prevailing remuneration. (h) Yes, in accordance with the Labour Code.

GFJTU: Yes.

Kenya. (j) Also, equal remuneration for men and women for work of equal value (Convention No. 100 and Recommendation No. 90).

Malaysia. (a) Yes, if they are employed by the subcontractor who supplies the contract worker to the user enterprise. The right to organize and to bargain collectively should be exercised with respect to the subcontractor. (d) No, remuneration should be determined by market forces. (h) (i) Yes, if they are employed by the subcontractor who supplies the contract worker to the user enterprise.

Mali. (j) The instrument(s) should provide that contract workers should enjoy the same rights and advantages as other workers, in accordance with national or international instruments.

Mexico. Yes, but (d)-(i) should be proportional.

Myanmar. (c) As provided in the Constitution of member States or in other relevant national laws. (c)-(i) As prescribed in the respective national laws.

Netherlands. (b) Age should be inserted.

VNO-NCW: Yes, but if the system of legal presumption is followed it is less necessary.

FNV, CNV, MHP: (a)-(i) Yes. (b) Sexual preference and age should be inserted. (d) (h) "Remuneration" and/or "social security" are understood as covering the employer's obligation, as provided for in national law, to continue pay in case of sickness, where sickness pay is not provided by a social security scheme. (j) Also: access to employee information; consultation and participation schemes in the user enterprise; access to government-sponsored training facilities in the user enterprise; and minimum wage provisions.

New Zealand. See *General observations*. New Zealand does not believe that relationship between parties contracting for services, or between parties who do not have any direct contractual relationship at all, are a proper subject for an instrument.

Norway. LO: (b)-(f) and (i) Yes.

Philippines. (j) Also, bonuses, incentives, training.

Poland. Solidarnosc: Yes.

Portugal. CIP: Yes. However (d) and (e) require greater flexibility, since remuneration and hours of work may vary according to the sector of activity and the region.

CGTP-IN, UGT: Yes

Rwanda. CESTRAR: Yes.

Saudi Arabia. According to national practice.

South Africa. (h) Also, protection promoting security of employment.

BSA: No. The instrument or instruments should not be so specific, but rather provide that the minimum protection afforded to contract workers should be consistent with each Member's nationally established protection.

Spain. UGT: (a)-(i) Yes. (j) Also, vocational training, promotion, unemployment protection and social contributions.

Sri Lanka. (j) Employment security.

Switzerland. (d) In a situation of contractual freedom, an employer is only obliged to respect equal treatment between men and women in so far as their remuneration is concerned, but is free to fix differently the remuneration for its regular employees and for contract workers. (f) (i) Social insurance legislation in Switzerland applies exclusively to employees. Workers involved in subcontracting who are considered to be independent must themselves take the necessary insurance measures in case of occupational accidents or diseases related to their activities. (h) See reply to Question 5 (2).

ASM: It is not appropriate to put contract workers on the same footing as other workers, since the latter's treatment varies, among other things, on the duration of work (e.g. short-term assignments). This variability should also apply to contract workers. (d) Should definitely be excluded.

CP: (a)-(c) and (f) Yes, while the other points should be decided upon by the social partners, in accordance with the particularities of each industry.

CSC/CNG: (a) (i) Yes.

VSA: (a)-(i) Yes.

Turkey. TISK: The ranking implied by using the phrase "at least" is a detail that could be an obstacle to the development of this type of employment. The protective measures with respect to both pecuniary conditions and working conditions, in a broad sense, should be determined for everybody, with certain absolute minimum requirements.

TÜRK-IS, CPTUT: (a)-(i) Yes.

United Arab Emirates. (j) End-of-service benefits.

United Kingdom. (a) Individuals in the United Kingdom already have the right to belong, or not to belong, to a trade union. They also have the right not to be refused employment on the grounds of trade union membership or non-membership. As regards the right to bargain collectively, any instrument should mirror Article 4 of Convention No. 98: "measures appropriate to national conditions shall be taken, where necessary". Unions are at liberty to attempt to persuade employers of the benefits of collective bargaining. However, all employers must be free to decide, in the light of the circumstances and needs of their businesses, whether to recognize (or continue to recognize) unions for collective bargaining or any other purposes. (b) The United Kingdom Government does not believe that a non-discrimination clause should be included in the proposed instrument as there are acts of discrimination that could make ratification difficult for Members — e.g. acts done under statutory authority, discrimination where being of a particular racial group is a genuine occupational qualification for a job, and positive action training and encouragement measures for members of particular racial group. (c) Minimum age should be 13 for work that does not interfere with children's education, health or general development. Age for admission to full-time work of the type intended to be covered by any instrument should not be less that the age at which compulsory schooling ends (around the child's 16th birthday).(d) No, the United Kingdom Government believes that remuneration is a matter best agreed upon by employers and employees without interference from government. (e) No, the United Kingdom Government believes that employers and employees are best placed to agree terms and conditions of employment, including hours of work. Businesses need to offer terms which allow them to recruit and retain suitable staff and to remain competitive. (g) Employees in the United Kingdom are entitled to a wide range of statutory rights in connection with maternity. This includes the right to maternity leave, to a longer period of maternity absence for employees with two years' service with the employer, to statutory maternity pay and to protection from dismissal for maternity-related reasons. Provided they are *employees* contract workers will be entitled to these rights in the same way as other employees. (h) In the United Kingdom, if a contractor is employed he and his employer will pay national insurance contributions in the normal way; if he is self-employed he will be liable to pay. Either way the benefit position of those in work will be protected. If a contract worker is sick or unemployed he can receive credits in the same way as any other worker. Similarly, he is able to protect his pension position, if necessary, by the payment of Class 3 contributions.

CBI: To ensure all the protection listed here would blur the distinction between those who are and whose who are not employees and, on a practical level, some aspects would not be achievable. However, the CBI does believe that everyone should have a right to have their health and safety respected and not to be discriminated against except with regard to merit.

TUC: (a)-(i) Yes. (j) Also, unfair dismissal.

United States. (j) Also, protection against discrimination based on age and discrimination based on physical or mental disability.

USCIB: (a) No, in the United States contract workers do not have an employment relationship with the contractor and, therefore, as a matter of law, do not have the right to organize and bargain collectively with the contractor. Moreover, contract workers frequently provide their services on an occasional, short-term basis. They do not share a sufficient community of interests with the employees of the user firm or, in most instances, among themselves to participate in collective bargaining with that firm, or with the firm that provides the contract workers. The proposed regulation would cause employment narrowing in labour markets and would also deprive enterprises of their flexibility and competitive power. However, if a list of protective measures must still be determined, it would be appropriate to spell out that a contract worker service of a minimum of six months must be a requirement. (b) (c) Yes. (d) Yes, provided that a contract worker who wishes to offer services at an initial preferential rate as a means of securing future contracts is not precluded from doing so. (e) Yes, provided that a contract worker who wishes to exert special effort in order to satisfy a user and secure future contracts or to complete a current contract in order to proceed to another one is not precluded from doing so. (f)-(h) Yes. (i) Yes, in accordance with United States practice of workers' compensation for employees and tort recovery for others.

AFL-CIO: In addition to the protection listed in (a)-(i), contract workers should enjoy protection against discrimination on the basis of sexual orientation. Further, contract workers should receive health insurance benefits on the same basis as the "core" workers of the user enterprise.

Uruguay. Worker sector: (a)-(i) Yes. (j) Add "any other protective measure that may be applicable to other workers".

Yemen. (j) Wage protection, lawful strike, apprenticeship, occupational training, leave and contract termination.

Zimbabwe. (h) Yes, e.g. injuries on duty, employment, other pension schemes.

This question has received approval in a large majority of replies, which widely recognized that contract workers should enjoy protection with regard to at least the issues listed in subparagraphs (a)-(i). A number of proposals have been made to add to this Point some other issues, including protection against discrimination on the basis of age, physical or mental disability, sexual orientation, lawful strikes, apprenticeship, occupational training, leave, end-of-service benefits. The view has also been expressed that such protection should be afforded to those workers who are dependent on the user enterprises, except "genuine" one-person enterprises ("self-employed") whose possible economic dependency does not necessarily demonstrate characteristics similar to those of an employment relationship. Certain reservations have also been made with regard to the meaning of the word "adequate".

The matters regarding which protection of contract workers might be needed, as set out in this question, were largely inspired by other ILO standards. As the large majority of replies have endorsed the principle regarding the matters referred to in (a)-(c), the principle of such protection has been included in the Proposed Conclusions with a view to a Convention. The Office is, however, of the opinion that this Point, which was originally worded in general terms in order to have the ILO constituents' views on the areas where contract workers need protection, should receive further development in order to place emphasis on the areas of protection which are specifically important to contract workers, namely safe and healthy workplace, payment of amounts due to contract workers[5] and of social insurance contributions, and compensation in case of injury or disease, while leaving somewhat greater flexibility in respect of those matters on which the nature of protection may be affected by the non-employee status of contract workers. The Proposed Conclusions with a view to a Convention have been drafted accordingly *(Points 9 and 10)* with the first group of questions covered by Point 9, and the second by Point 10. In order to take account of different approaches to the treatment of contract workers with regard to the rights covered by Point 10, which were originally established in many countries to protect those who are in a formal employment relationship, the Office believes that more flexibility should be added to this Point. To this end, the phrase "as appropriate" has been inserted. This will allow each member State to apply this provision in accordance with the approaches recognised by its law and practice, and in compliance with the existing international standards that might be applicable to them.

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[5] The term "remuneration" used in subparagraph (d) of this question, which has traditionally applied to the employment relationship, is replaced by the term "amounts due to contract workers" since, according to *Point 5*, the term "contract labour" implies arrangements with no employment relationships formally established between workers and the user enterprises

As regards the term "adequate", the Office has decided to retain it in *Points 9 and 10* in order to have sufficient flexibility in so far as a varying degree of dependency is concerned. This would allow the protection afforded to contract workers to correspond to the degree of the worker's subordination to and/or dependency on the user enterprise.

Should the instrument or instruments provide that statistics and other information on contract labour should be compiled by each Member, kept up to date and made publicly available? **Qu. 9**

Total number of replies: 78.

Affirmative: 62. Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Comoros, Costa Rica, Cuba, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, France, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Slovakia, South Africa, Spain, Sudan, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, United States, Uruguay, Yemen.

Negative: 7. Australia, Colombia, Cyprus, Finland, Germany, Malaysia, United Kingdom.

Other: 9. Argentina, Gabon, Japan, Malta, Norway, Saudi Arabia, Sri Lanka, Switzerland, Zimbabwe.

Argentina. Statistics should be compiled as far as each Member is able to do so.

Australia. No. While accurate statistics would be useful, an information gathering requirement may provide distorted results due to the range of relationships included as contract labour, and the hidden character of some classes of contract labour, such as homework.

Austria. BAK: Yes.

Bahrain. Employers consider it necessary.

Belgium. In view of the cost implications, such a rule should be inserted into a Recommendation.

Benin. For a Recommendation.

Brazil. The instrument could also refer to the importance of carrying out general and sectoral studies, which are essential to a better understanding of contract labour, and the preparation, evaluation and revision of policies and programmes for this purpose.

CNA, CNC: Yes.

Canada. Add "to the extent possible" before "compiled". Statistics of this nature may be difficult and burdensome to compile.

Chad. Yes. However, due to insufficient resources, Chad will not be in a position to collect such information within the next five years.

Costa Rica. UCCAEP: Yes.

Czech Republic. KPZS-ČR: Confidentiality of a commercial information should be ensured.

Cyprus. It will be difficult from the practical point of view.

Estonia. AETU: This should be included in a Recommendation.

Finland. No, if the idea is to include both formal employed and the self-employed. Such statistics are not available in Finland.
TT, LTK, FFE: No.
SAK, STTK, AKAVA: Yes.

Gabon. Optional provision, depending on whether the instrument covers all workers engaged in subcontracting or not.

Germany. No. In view of the difficulties involved in formulating definitions, it would be impossible to produce meaningful comparable statistics.
DGB: If it is possible to collect reliable statistics in these areas, the information should be processed and published.

Greece. Yes, this provision should go into a Convention.
GCGW: Yes.

Hungary. Employer organizations: Yes, only for employers using contract labour regularly.

Iraq. GFTU: Yes.

Israel. Histadrut: Yes.

Japan. The words "statistics and other" should be deleted. Though information on contract labour may well be compiled for a statistical survey, it would be difficult to obtain accurate labour statistics in such a broad and complex field where the very concept of contract labour is ambiguous. The instrument should allow each member State to act in the light of its actual circumstances.
NIKKEIREN: The instrument should only point out the importance of compiling and updating the statistics and other information, and of making them publicly available. It is not necessary to impose such duties on Members.
JTUC-RENGO, ZENROREN: Yes.

Jordan. FJCC: No.
ACI: Yes.
GFJTU: Yes.

Malaysia. The collection of statistics should not be mandatory and made publicly available.

Malta. The compilation of detailed statistics would be too complicated.

Mauritius. Yes, as far as possible.

Mexico. Yes, specifications should be included to measure current trends such as chains of production, degree of independence, labour flexibility, cost reduction, etc.

Netherlands. Yes, provided that the instrument is a Recommendation.
VNO-NCW: No.
FNV, CNV, MHP: Yes, in a Recommendation — or, in the case of a Convention, in similar wording to that used in the Homework Convention, which was acceptable to governments because of its promotional character.

New Zealand. See *General observations.*

Norway. Such a provision should, if necessary, be placed in a Recommendation.

LO: Yes.

Poland. Solidarnosc: No. This is a useful idea, but only for a Recommendation.

Rwanda. This is more appropriate for a Recommendation, as many countries do not have the necessary infrastructure.

Saudi Arabia. Wherever possible.

South Africa. Such statistics should identify the extent of employment of contract labour and, where feasible, indicate the sectors in which employees are employed and the subcategories of contract labour involved.
BSA: Administrative costs might be prohibitive.

Spain. UGT: Yes. Add "with periodical notification of the social partners".

Sri Lanka. This may not be possible.

Switzerland. It is important to compile statistics concerning the supply of labour through intermediaries ("labour-only contracting"). As regards information about individual subcontracting, its collection might only be possible in relation to user enterprises.
ASM: It might become expensive. Swissfashion: No.
CSC/CNG: Yes.
VSA: Yes.

Turkey. TISK: Yes.
TURK-IS: Yes.
CPTUT: This useful idea is more appropriate for a Recommendation.

United Kingdom. No.
TUC: Yes. But this provision should be in the Recommendation, which should emphasize the importance of statistics for the development of national policy.

United States. USCIB: No, this would be an unnecessary and burdensome requirement. To the extent that information on contract employment is needed by the public authorities, it can be obtained through periodic surveys, as is done now by various United States agencies.
AFL-CIO: Yes. However, any instruments should retain sufficient flexibility in this regard to accommodate the varying capacities of each Member.

Uruguay. Worker sector: Yes.

Zimbabwe. It will be difficult to implement.

While the majority of replies to this question were in affirmative, certain concerns have been expressed with regard to the possible economic and organizational difficulties in compiling such information. In order to provide for greater flexibility, the Office has included this Point in the Proposed Conclusions with a view to a Recommendation *(Point 25)* and inserted in it the phrase "where possible".

Should the instrument or instruments provide that effective measures should be taken to ensure that contract workers are informed in an appropriate and easily understandable manner of their remuneration (or how it will be determined) and the conditions of work that will be applicable to them? **Qu. 10**

Total number of replies: 74.

Affirmative: 70. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Ghana, Germany, Greece, Haiti, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay, Yemen, Zimbabwe.

Negative: 1. Australia.

Other: 3. Comoros, Costa Rica, Hungary.

Australia. No. Clear and unambiguous terms are a necessary part of a valid contract and should be promoted to encourage good contracting and successful commercial relationships. However, this should not be taken to mean that the Government or the user enterprise has a responsibility to inform the contract workers of their rights.

Austria. BAK: Yes.

Barbados. Yes, in writing. This contract should not include any clause that prohibits the worker from joining a trade union.

Belgium. This kind of rule regularly appears in ILO instruments. A general rule could be envisaged that would apply to all employees (perhaps a simplified version of EU Directive 91/533/CEE of 14 October 1991), adaptable to the diversity of States and legal systems.

Brazil. CNA, CNC: Yes.

Comoros. This is a general rule which should appear in the Convention.

Costa Rica. To avoid possible abuse, procedures should be indicated for calculating the wage and the minimum amount to be paid, as is the case with other workers recruited "normally", so that the contract worker is free to negotiate an appropriate amount, in accordance with the special characteristics of the contract.

UCCAEP: Contract workers should be informed how to defend their rights and prerogatives.

Finland. Yes, where occupational safety is concerned.

TT, LTK, FFE: The same rules should apply to formal employees rather than creating artificial divisions between groups.

SAK, STTK, AKAVA: Yes.

France. See under Question 5 (1).

Germany. DGB: Yes.

Greece. Yes, this particularity of contract labour and the different legal statuses of contract workers, as well as that of natural and legal persons considered as employers, subcontractors or intermediaries, call for measures to be taken to provide the workers with sufficient information (in writing) regarding their salaries and other conditions of work. This would ensure greater transparency. In this regard, EU Directive 91/533/CEE of 14 October 1991 might be a good example.

GCGW: Yes.

Hungary. This information is provided for in the general labour rules.

Iraq. GFTU: Yes, in a Recommendation.

Israel. Histadrut: Yes.

Japan. NIKKEIREN: Since situations vary from country to country, the instrument should deal with this matter only in a general way, pointing out the importance of clarification of responsibilities between the subcontractor, the user enterprise and the intermediary.
JTUC-RENGO, ZENROREN: Yes.

Jordan. FJCC: Yes.
ACI: Yes.
GFJTU: Yes.

Mexico. Yes. As under Question 5 (1), these rights should be proportionate to the service performed.

Netherlands. Yes. Sanctions should also be arranged if the contract workers are not duly informed.
VNO-NCW: See reply to Question 10.
FNV, CNV, MHP: Yes. Section 6 of article 7A:1637f of the Dutch Civil Code, which provides for the employer's obligation to inform a worker about the main terms of employment, provides for analogous application to other dependent employment relationships than the formal employment contract.

New Zealand. See *General observations.*

Poland. Solidarnosc: Yes.

Portugal. Yes. However, in line with article 1(2) of Directive 91/533/EEC of 14 October 1991, States could be given the possibility of providing that this obligation is not applicable to contract workers in the following situations: (i) for a period of not more than one month; (ii) where weekly work does not exceed 8 hours; (iii) in casual and/or special employment, if there are objective reasons for non-application.

Rwanda. CESTRAR: Yes.

South Africa. This requirement should extend to other benefits available to employees such as relevant protective legislation and social security entitlements.
BSA: Yes.

Spain. UGT: Yes. Also, such information should be included in a written contract between the enterprise and the contract worker, through the intervention of the trade union representatives if they exist in the sector or enterprise concerned.

Switzerland. In contracts between the user enterprise and the subcontractor (or intermediary) and between the latter and the contract worker.
UCAPS: In the same way as regular employees are to be informed.
CSC/CNG: Yes. VSA: Yes.

Turkey. TISK: Yes.
TÜRK-IS, CPTUT: Yes.

United Kingdom. Yes, provided they are contract workers who are *employees.* Under United Kingdom legislation, such contract workers are entitled to a written statement of the employment particulars, provided that the employment lasts for one month or more. The written statement would include all the main terms and conditions of the job including hours of work, holiday entitlements, pension and sickness arrangements and details of remuneration, — and the intervals at which it is to be paid. It should be stressed that the employment protection rights apply to *employees* only. There are strong reasons for this. The Government believes that it would not be right to require employers to carry the full burden of the legislation without the minimum degree of mutuality of obligation which must be present in a contract of employment between employer and employee. To extend the legislation to non-employees would add to employers' costs, reduce work opportunities and inhibit the strong economy which the aim of every government must be to encourage. Where a doubt arises about the employment status of a worker, it would be for the courts or the industrial tribunals to decide the matter.
CBI: Only as far as one might expect the terms of a commercial contract to be clear.
TUC: Yes, for the Convention. The Recommendation might also suggest that, recognizing the over-representation among contract workers in some countries of migrant workers and

workers from ethnic minorities, such basic employment information should, where practicable, be made available in languages understood by them.

United States. USCIB: Yes, provided that the measures are practicable and realistic and do not impose on the parties a burden that would result in fewer opportunities for workseekers who wish to take advantage of contract work opportunities.

AFL-CIO: Yes, contract workers should be fully informed regarding their terms and conditions of employment in ways that will allow them to comprehend and enforce their rights.

Uruguay. Worker sector: Yes.

Since this question has received vast majority support, the Office has retained its wording and included it in the Proposed Conclusions with a view to a Recommendation *(Point 17)*.

Qu. 11 *(1) Should the instrument or instruments provide that contract labour might be prohibited in circumstances specified by national law?*

(2) If so, in which circumstances might contract labour be prohibited?

(3) Might these circumstances include:

(a) hazardous occupations?

(b) replacement of workers participating in a lawful strike?

Paragraph (1):

Total number of replies: 74.

Affirmative: 63. Argentina, Austria, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Egypt, El Salvador, Estonia, Ethiopia, France, Gabon, Ghana, Greece, Haiti, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Philippines, Qatar, Romania, Saudi Arabia, Slovakia, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States, Yemen.

Negative: 7. Bahamas, Denmark, Finland, Peru, Portugal, Sudan, Uruguay.

Other: 4. Australia, Hungary, Germany, Switzerland.

Paragraph (2):

Total number of replies: 41.

Paragraph (3):

Subparagraph (a):

Total number of replies: 53.

Affirmative: 40. Austria, Bahamas, Barbados, Belgium, Bulgaria, Cambodia, Canada, Chad, China, Colombia, Cuba, Czech Republic, Ghana, Comoros, Haiti, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Philippines, Qatar, South Africa, Sri Lanka, Sudan, Surinam, Swaziland, Thailand, Turkey, United Arab Emirates.

Negative: 5. Denmark, Mexico, Spain, Zimbabwe, United Kingdom.

Other: 8. Australia, Brazil, Costa Rica, Cyprus, Gabon, Germany, Greece, Switzerland.

Subparagraph (b):

Total number of replies: 55.

Affirmative: 35. Austria, Bahamas, Barbados, Belgium, Benin, Bulgaria, Canada, Chad, Colombia, Comoros, Gabon, Ghana, Greece, Haiti, Italy, Kuwait, Malaysia, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Philippines, Qatar, South Africa, Spain, Sri Lanka, Sudan, Surinam, Swaziland, Thailand, Turkey, Yemen.

Negative: 14. Australia, Cambodia, China, Czech Republic, Denmark, Indonesia, Japan, Jordan, Kenya, Malta, Mauritius, United Arab Emirates, United Kingdom, Zimbabwe.

Other: 6. Brazil, Costa Rica, Cyprus, France, Germany, Switzerland.

Argentina. (1) Yes, according to the criteria established in legislation.

Australia. (1) This should be left to Members. (3) No. Although current Australian federal legislation does not permit termination of an employee's contract in circumstances of lawful industrial action, it is appropriate to allow contract workers to replace employees for the duration of the action.

Austria. (1) Yes, to the extent the instrument also covers triangular contractual relations (job placement, manpower hire/supply). (2) Contract labour could be prohibited when the "subcontractor" has seriously or repeatedly violated statutory obligations, particularly in respect of contract workers.
BAK: Yes.

Barbados. (2) Also, when workers are not adequately protected by legislation.

Bahamas. (1) No, this is not necessary. (2) Only if it is illegal immigration.

Belgium. (3) (b) Prohibition of one or two forms of contract labour could be foreseen. Prohibitions may be foreseen not only in the situations described in paragraph (3) but also in respect of certain branches of activity where important frauds have occurred because of subcontracting practices.

Benin. (2) When the subcontracting conditions do not provide for satisfactory protection for the workers concerned; in case of labour-only contracting; when the subcontracting arrangements endanger the conditions of work of the employees of the user enterprise; when the subcontractor does not observe the provisions of relevant legislation or collective agreements. (3) (b) since minimum necessary services are not provided due to a legal strike, the situation for the population becomes difficult.

Brazil. (2) (3) (a) In addition to the circumstances indicated in 3 (a), mention could also be made of the use of machinery, equipment, materials and substances which are hazardous to the health and safety of workers, the subjection of workers to situations which constantly infringe their basic rights, such as the use of child labour and forced or degradating labour, and the clear intention to disregard labour obligations. (3) (b) Although this is a serious matter, it should be subject to the sanctions established by national legislation.

CNA, CNC: (1) No.

Burundi. (2) Services which the State would like to keep secret (e.g. the construction of a military base).

Canada. (3) (a) In some cases, the contract workers or subcontractors are the best qualified to do the job or are the only specialists for a particular hazardous situation. They should, however, under specified conditions, have the right to refuse work where they believe that it constitutes a danger to themselves. (3) (b) Yes, where specified by legislation in a particular jurisdiction, e.g. in Canada in the provinces of British Columbia and Quebec.

Cambodia. (2) Contract labour might be prohibited in the course of a strike or a lock-out.

Chad. (2) When subcontracting for work or service turns actually out to be subcontracting for labour.

China. (2) When it is against the public interest and infringes the rights and interests of workers.

Colombia. (2) When it is used for unfair competition or to avoid social security payments.

Costa Rica. (1) There should be provisions respecting the sectors in which contract labour may or may not be used, and the circumstances and conditions in which it may be prohibited. (2) In the case of disabled workers (except as regards special programmes sponsored by some states or by a social body which is duly recognized and accredited); persons with little schooling; work for which there is a large supply of labour; work normally carried out by the enterprise and for which there is no acceptable justification for recourse to contract labour; in all other cases in which it is possible to recruit "normally" and where there is no justification for recourse to contract labour. (3) The list could be very long since contract labour is an attempt to offer a new way of carrying out certain tasks or services, without prejudice to "normal" forms of recruitment and work.

UCCAEP: No prohibition should be established.

Cuba. (2) Member States would have to specify the circumstances. (3) (a) and (b) Yes. Could be among others.

Cyprus. (3) (a) Protection should be provided through authorization procedures involving the competent authority. (3) (b) Both lawful and unlawful strikes should be mentioned.

Czech Republic. (2) Unless sufficient protection is envisaged according to criteria mentioned in Question 8.

Egypt. (2) Dangerous occupations and work affecting national security.

El Salvador. (2) When work is not suited to the age, physical and mental development of minors under 18 years of age; when it is a question of employing women or minors under 18 years of age for unhealthy or dangerous tasks; when authorization is sought for work to be done by minors from the age of 16 onwards without there being full health guarantees.

Finland. TT, LTK, FFE: (1) Rather than creating artificial divisions, the same rules should also apply to formal employees.

SAK, STTK, AKAVA: (1) Yes, fields in which contract labour is permissible could be defined in national legislation. (3) (b) Yes.

France. (3) (b) This is not justified since the objective of subcontracting is not to replace the employees of the user enterprise, whatever the reasons are (strikes, etc.): that would be false subcontracting. Moreover, French labour legislation prohibits the replacement of employees on strike by temporary workers or by subcontracting for an indefinite duration.

Gabon. (3) (a) Not necessary, if contract workers enjoy protection similar to that enjoyed by regular employees of the user enterprise.

Germany. Questions 11-16. These questions do not clearly indicate whether they refer to all forms of contract labour and only to workers or also to self-employed persons and those assimilable to workers. It is also unclear whether these questions merely refer to persons supplied to another employer to perform a service (temporary work) or also to persons who, working for a subcontractor, perform their duties in order to fulfil the latter's obligations and, in so doing, perform work in another enterprise. As regards Question 11 (3) (b), Germany cannot agree to the chosen form of words. It is true that, in Germany, an industrial dispute does not lead to the dissolution but simply the suspension of the existing employment relationship, with the consequence that the principle mutual obligations ensuing from the *employment* contract are put in abeyance. Nevertheless, an employer hit by a strike is entitled to lessen the effects of industrial action upon his company by the use of all available means. He/she may, for instance, have work — that remains unperformed on account of a strike — carried out by workers willing to do it; he/she is permitted to recruit new workers or pass on work unperformed on account of a strike to third parties. Nevertheless, a temporary worker is entitled to refrain from performing work in a firm directly affected by an industrial dispute. As regards Question 13, if there is equal treatment for contract workers as suggested by the question, improvements may admittedly be achieved; it is, however, equally probable that the labour law status of contract worker will deteriorate. Contract workers would in any case, and independently of their own doing, be constantly exposed to discrepancies in their conditions of employment.

DGB: Members should be able to prohibit specific forms of contract labour. In particular, in the case of hazardous occupations and when strikebreakers are used, a ban should be possible. In addition, it should be possible to ban or limit particular forms of contract labour in sectors where abuse is widespread and monitoring problems exist.

Ghana. (2) Also, when the employer seeks to gain an unfair advantage over regular employees or when the intent is to undermine the terms or conditions of work of regular employees.

Greece. (2) Yes, (i) when work is closely related to the user enterprise principal activities and is carried out by its regular employees; (ii) when the subcontractor for labour does not have sufficient capital or investments (e.g. tools, machinery, etc.); (iii) when such work fall within the competence of public sector enterprises (in the strict sense of the word). (3) (a) Yes, under the following conditions: (i) the workers concerned do not have necessary skills and appropriate professional training; (ii) measures to protect health and safety are not taken by those who should do so. (3) (b) Yes. The user enterprise should also be prohibited from giving the work of regular employees on a legal strike to contract workers who have already been engaged by that enterprise at the moment when the strike began.

GCGW: (3) (a) Yes, the instruments should envisage that national legislation can prohibit contract labour where the contract workers are engaged to perform work in dangerous occupations without necessary skills and appropriate professional training. (3) (b) No.

Hungary. (1) This provision does not suit a Convention.

Indonesia. (2) Contract labour should be prohibited where the work is permanent and continuous.

Iraq. GFTU: (1) (3) Yes.

Israel. Histadrut: (1) Yes. (2) (i) In case of substantial abuse or exploitation of contract labour which is not controllable by other means; (ii) When an employer seeks to gain an unfair advantage over regular workers in connection with collective bargaining, or when the intent is to undermine the terms and conditions of regular employees; (iii) when contract labour is used for activities directly related to the core or principle business of the employer, except in specific circumstances. (3) (a) and (b) Yes.

Japan. (3) (b) This problem should be discussed prudently in relation to employer's management rights and freedom with respect to hiring. Judging from the principle of autonomy of labour and management, it should be settled by labour-management agreement based on the labour's and management's judgement.

NIKKEIREN: Prohibition of contract labour should be in accordance with the actual conditions of each Member. (3) (a) Some hazardous occupations are necessary in certain cases, and the use of contract labour cannot in practice be prohibited as a whole. (b) Replacement of workers participating in a lawful strike should not be included; a careful examination should be made in each case, taking into account the managements prerogatives and the employer's right to hire.

JTVC-RENGO: Contract labour should be prohibited in certain dangerous or harmful occupations, as well as in substitution of striking workers.

ZENROREN: (1) Yes. (2) When: (i) the normal or "core" work of the user enterprise is performed by contract workers; (ii) contract workers replace regular employees of the user enterprise for a long time; (iii) when contract labour is used mainly or solely for the purpose of avoiding an obligation under labour and social security laws; (iv) labour-only contracting is practised.

Jordan. FJCC: (1) No.

ACI: (1), (3) (a) Yes. (3) (b) No.

GFJTU: (1) (3) Yes.

Kenya. (2) To be determined by the competent authority.

Kuwait. (2) Hazardous occupations which harm general health.

Lithuania. (2) Contract labour might be prohibited in the absence of a licence for certain types of work.

Malaysia. (2) In the same circumstances as it is prohibited in respect of direct workers.

Malta. (3) (b) No, the role of the Government during a dispute should be neutral except in so far as it seeks to bring about an amicable settlement through conciliation and arbitration.

Mauritius. (2) Yes, in major hazardous installations where personnel are trained specifically for such work. (3) (b) No, provided that this is needed to run a minimum service to avoid endangering the life, personal safety or health of the whole or part of the population.

Mexico. (2) In the case of fictitious subcontracting for the purpose of defrauding the workers or user enterprises or to evade tax or social security obligations. Penalties should be prescribed in these cases, as in the case of using workers in the event of lawful strikes.

Namibia. (2) In situations where it is in conflict with the Constitution and other labour legislation of the country concerned.

Netherlands. (2) Where there is a serious threat to good relations on the labour market and to the accepted standards of protection in sectors, regions and/or companies. (3) (a) Yes, if there are inacceptable risks to the health and safety of the contract worker and/or the environment.

VNO-NCW: (1) (3) (b) Yes. (3) (a) No.

FNV, CNV, MHP: (1) Yes, provided that the social partners are actively involved in the discussions about prohibitions and that the government interferes only where this is strictly necessary. (2) When contract labour implies an important risk that the labour market and industrial relations will be impaired. In branches and professions that require stable employment relations and close supervision by the user enterprise in order to prevent accidents and serious health risks. (3) (a) Yes. Not only occupational hazards for the worker should be taken into account, but also occupation-related hazards for colleagues, clients and the general public. (3) (b) The Convention should require Members to prohibit both the replacement of workers participating in a lawful strike and the engagement of contract workers in view of an announced strike.

New Zealand. (1)-(3) See *General observations.*

Nicaragua. (2) Work by minors.

Niger. (2) Also, part-time work.

Norway. LO: (3) The instrument should provide that supply and leasing of labour might be prohibited.

Oman. (2) Where secrecy and reservation is required for national security.

Pakistan. (1) In circumstances specified by law.

Panama. (1) Yes, but since this is a matter to be dealt with by national law, it is not advisable to refer to particular situations, as these need to be studied in depth. Therefore, the areas indicated in (3) might be considered as basic matters for discussion.

Peru. (1) The instruments might provide that limitations be placed on contract labour. In Peru, for example, the number of workers supplied by temporary worker enterprises may not exceed 20 per cent of the total of workers in the user enterprise. If this requirement is not respected, the surplus workers are considered to be in a direct employment relationship with the user enterprise.

Philippines. (2) To circumvent local laws on regular employment and in circumstances which might involve labour-only contracting.

Poland. Solidarnosc: (1) Yes. (2) (i) Areas of economic activity where there is widespread abuse or exploitation that is not controllable by other means. (ii) Where employers seek to gain unfair advantage over regular employees in connection with collective bargaining or where the intent is to undermine the terms and conditions of regular employees. (iii) Activities directly related to employers' "core" or "principal" business, except in specified circumstances. (3) (a) and (b) Yes.

Portugal. No, such a provision could be accepted only as regards the supply of labour to replace striking workers.
CGTP-IN: Yes, the instrument must expressly establish that contract labour can be used only for work of an objectively temporary nature, as specifically established by national legislation and which cannot be normally carried out by the user enterprise.
UGT: Yes.

Rwanda. CESTRAR: Yes.

Slovakia. (2) For reasons of safety and health, some work within the framework of contract labour should be prohibited.

South Africa. (1) The circumstances in which prohibition is permitted should be extended beyond those listed, to include situations in which the potential exists for excessive levels of exploitation of contract workers. (3) (b) Also, replacement of workers who are excluded from work during a lock-out.
BSA: (3) (a) Yes. (3) (b) No.

Spain. (3) (a) No, but there should be a requirement that special safety measures be adopted to guarantee their application.
UGT: Yes. Prohibitions or sanctions should cover cases involving the forced transfer or collective dismissal of regular employees replaced by contract workers.

Sri Lanka. (2) When the replacement of permanent employees by contract labour is attempted.

Suriname. (2) If workers have been dismissed for economic reasons, their work cannot be done by subcontractors.

Switzerland. (3) (a) Since under Swiss law subcontracting constitutes an employment relationship, all labour laws and regulations apply. Therefore, there is no need to established specific rules prohibiting contract labour in hazardous occupations. (3) (b) The instrument should give Members the possibility of prohibiting contract labour to replace workers participating in a lawful strike.

UCAPS: No.

CSC/CNG: (1) Yes. (2) In case of violation of fundamental rights of men and women.

VSA: (1) Yes.

Thailand. (2) The replacement of contract workers participating in a lawful strike should be prohibited.

Turkey. TISK: (1) Certain exceptional circumstances can be specified in national law.

TÜRK-IS: (1) Yes. (2) In all circumstances when it is considered to be prejudicial to the worker. (3) Yes.

CPTUT: (1) (3) Yes. (2) In some public services such as health, education, etc.

United Arab Emirates. (2) Secretarial and allied professions.

United Kingdom. (2) In the interests of national security.

CBI: Members might have discretion to impose prohibitions, but only for reasons of national security.

TUC: (1) Yes. Alternatively, governments might be allowed to establish specific categories where contract labour is permitted and to prohibit it in all other categories. (2) Where there is abuse and exploitation that is not controllable by other means — for example, if no other method can be found to end bogus self-employment in a particular sector or industry; and where an employer seeks to use contract labour to undermine collective bargaining, or the terms and conditions of regular employees. Except in specified circumstances, employers should in general be prohibited from using contract labour for core or principal business activities, including areas entailing the exercise of statutory authority in the public service, national security, law enforcement, the judiciary, and the penal system. (3) (a) Yes. However, clear employer responsibility and the continuity of an employment relationship to provide training are needed here. (3) (b) Yes.

United States. (3) Yes, any such prohibitions would differ from Member to Member, and should be in accord with national law and practice.

USCIB: (1) No, the use of the use of contract labour should remain flexible and should not be artificially precluded. (3) (a) No, the use of contract workers with special skills might be the most socially, environmentally and economically desirable method of undertaking certain hazardous tasks. (b) No, contract workers are used frequently in the United States to replace workers during a strike. Replacement of strikers is a legitimate economic alternative of employers, whether it be through hiring contract workers or hiring replacement employees.

AFL-CIO: Any instruments should provide that governments have discretion under appropriate circumstances to prohibit contract labour. For example, the United States experience regarding agricultural labour demonstrates that indirect means of regulation have proved largely ineffective in enhancing the conditions of agricultural labourers. Placing direct responsibility on the user enterprise in that sector will be the most effective means of ending long-standing abuses. In addition, the AFL-CIO recommends that the use of contract labour be prohibited in labour disputes, including strikes, and that prisoners not be used as contract labour. Finally, employers should not be permitted to use contract labour to perform their core functions, except where special circumstances prevail.

Uruguay. Worker sector: (3) (b) Yes.

Yemen. (2) Employment of pregnant women for overtime from the sixth month of pregnancy till six months following their return to work after maternity leave, and in hazardous industries and occupations that are detrimental to their health and socially harmful. Night work for women. For minors: overtime, night work, work during the daily or weekly rest-time, official holidays and leave, without the authorization of the minor's legal guardian, in remote areas, in hard labour, and in harmful industries and hazardous occupations. Employment of non-nationals.

Zimbabwe. (2) In the case of lawful strikes. (3) (a) No, the same conditions applying to the permanent workers should apply to the contract workers.

In principle, this question has received wide approval in a majority of replies. However, certain suggestions and reservations have been made, especially in so far as subparagraphs (2) and (3) are concerned. In a number of replies it was proposed to extend the possibility of prohibiting contract labour to the following instances: where the contracting enterprise intends to avoid obligations under a labour or social security statute or seriously or repeatedly violates such obligations as regards contract workers; where recourse to contract labour undermines or endangers the terms and conditions of work of, or the labour-management relations or collective bargaining arrangements regarding, regular employees; where it is for the core or normal work of the user enterprise or is not for objectively temporary work, and no special circumstances justify it; where it is to replace workers dismissed for economic reasons; in case of labour-only subcontracting; where contract workers are insufficiently protected, particularly in respect of occupational safety and health; where contract workers do not have sufficient skills and training to safely carry out dangerous work or where the safe carrying out of such work requires stable employment and supervisory relations (although it has been pointed out that certain hazards are most effectively dealt with by specially skilled contract workers); in the interest of national security; in specified sectors, such as health and education; in the case of minors, disabled workers or the unskilled. It has further been proposed that under specified conditions contract workers should have the right to refuse to work where they believe that it constitutes a danger to themselves, and that any decision to prohibit contract labour should be preceded by consultation of the social partners.

Particular attention has been given in some replies to the question of prohibiting recourse to contract workers to replace workers on strike. While most replies considered that Members should be authorized to prohibit such use of contract labour, a number of replies considered that employers should be entitled to replace striking workers temporarily during a strike, and that such a prohibition was not therefore warranted. The Office would call attention to the fact that what is at issue here is not the prohibition of recourse to temporary employment for this purpose but to recourse to contract workers, who by definition do not become employees of the user enterprise. *Point 20 (1)* of the Proposed Conclusions with a view to a Recommendation does not, therefore, concern the question of recourse to temporary employees for this purpose.

The drafting of *Point 20* has been revised to take into account the comments made. The principle that contract labour should not be used to replace workers who are exercising their right to strike has been included as a general principle in *Point 20 (1)*, leaving it to each Member to decide whether this should be the subject of a prohibition or left to the social partners for implementation. *Point 20 (2)* has been drafted so as to include, in addition to hazardous work, contract workers made available by intermediaries (other than temporary work agencies, which are excluded under the definition of "intermediary" in *Point 16 (3)* of the Proposed Conclusions with a view to a Recommendation, since those intermediaries who formally become an employer of a contract worker are not covered); and work affecting national security. As regards contract workers made available by intermediaries, this is the essential form in which "labour-only" subcontracting is effectuated. National law and practice on this subject vary substantially from country to country: while in some countries this type of labour market activity is prohibited, in others it has been legally recognised in parallel with certain measures to protect the workers concerned. Having regard to the number of countries in which this practice is prohibited, the Office believes that it is appropriate to include this form of contract labour explicitly in the Proposed Conclusions with a view to a Recommendation, while leaving it open to those countries which do not prohibit this form of contract labour not to do so. Work affecting national security has also been included, on the suggestion of a number of countries. Members are of course also free to prohibit contract labour in one or more of the other circumstances mentioned above.

Since a majority of replies have been in the affirmative, though there has been a wide variety of views as to what kind of, contract labour might be prohibited, or in what circumstances, this Point has been included in the Proposed Conclusions with a view to a Recommendation to allow maximum flexibility in how the issue is dealt with nationally.

In accordance with one of the replies, the Office has also found it appropriate to reinforce protection of contract workers with regard to their safety and health by inserting a new Point in the Proposed Conclusions with a view to a Recommendation calling for measures to be taken to ensure that contract workers may refuse to perform work which they have reasonable justification to believe poses a serious danger to their safety and health *(Point 21)*.

Qu. 12 *(1) Should the instrument or instruments provide that recourse to contract labour should, in circumstances specified by national laws and regulations, be subject to an obligation incumbent on the subcontractor and/or the intermediary to register with or obtain a licence from the competent authority?*

(2) If so, in which circumstances?

(3) If so, should registration or licensing depend upon the subcontractor and/or intermediary demonstrating its viability as a business and capacity to meet its obligations to the contract workers concerned, or posting a bond sufficient to cover its obligations to the workers concerned?

Paragraph (1):

Total number of replies: 72.

Affirmative: 51. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Bulgaria, Cambodia, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Czech Republic, Egypt, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Lithuania, Malaysia, Malta, Mauritius, Myanmar, Namibia, Nicaragua, Pakistan, Panama, Peru, Philippines, Portugal, Saudi Arabia, South

Africa, Spain, Sri Lanka, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, United Kingdom, Uruguay, Yemen.

Negative: 11. Australia, Burundi, Denmark, Estonia, Finland, Netherlands, Niger, Qatar, Romania, Sudan, United States.

Other: 10. Brazil, Canada, Cyprus, Ethiopia, France, Germany, Kuwait, Norway, Switzerland, Zimbabwe

Paragraph (2):

Total number of replies: 41.

Paragraph (3):

Total number of replies: 50.

Affirmative: 36. Austria, Bahamas, Bahrain, Benin, Cambodia, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Czech Republic, Egypt, Gabon, Greece, Haiti, Hungary, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mauritius, Namibia, Nicaragua, Oman, Pakistan, Panama, Philippines, South Africa, Spain, Sri Lanka, Swaziland, Thailand, United Arab Emirates.

Negative: 7. Argentina, Barbados, Brazil, Bulgaria, Myanmar, United Kingdom, Uruguay.

Other: 7. Ethiopia, Ghana, Germany, United States, Saudi Arabia, Switzerland, Zimbabwe.

Argentina. (1) Yes, there should be registration.

Australia. (1) No. Licensing should be reserved for situations where it is necessary to regulate variables such as the level of skill, and should not be invoked to protect a class of labour. To do so (or to impose any sort of bonding arrangement) would be impractical and would impose additional regulatory burdens on employers, particularly in small business.

Austria. (1) Yes, in the case of job placement operations or hire/supply of employees. (2) In the case of operations conducted for profit.

BAK: (1) Yes. (2) Whenever there is placement in, or supply of manpower to, a user enterprise. (3) Yes, with the provision that the "capacity to meet its obligations to the contract workers concerned" is required, *as well as* the posting of a bond (i.e. not merely as an alternative).

Bahamas. (2) The usual penalties should apply, if this is not done.

Bahrain. (2) In all circumstances.

Barbados. (2) Provision should be made for the registration of persons exercising or engaging in any profession, trade or business.

Belgium. (1) Apart from certain specific activities such as temporary work, registration should not be generalized; it should be limited more particularly to sectors or branches where important and regular frauds have occurred in the use of contract labour. Registration should aim at ensuring that subcontractors meet their obligations in respect of the workers as well as in respect of social security institutions, so that the social security entitlements of the workers can be protected. Registration could also aim at ensuring that the subcontractors meet their tax liability; however, this aspect probably falls outside the scope of an ILO instrument.

Benin. (2) Circumstances to be determined jointly by the most representative employers' and workers' organizations.

Brazil. (1) (2) National legislation should prescribe the same treatment for a subcontracting enterprise as that granted to other legal persons as regards registration with the competent bodies, so as to eliminate bureaucratic obstacles which may hinder the establishment or operation of such enterprises. (3) No. These registration and licensing requirements do not apply to other enterprises. It would therefore be discriminatory to apply them to subcontracting enterprises. Countries have the means to monitor compliance by subcontracting enterprise with the obligations resulting from labour and other legislation.
CNA, CNC: (1) No.

Bulgaria. (2) When a contract is concluded directly with one worker or a group of workers.

Cambodia. (2) In the course of a strike or a lock-out.

Canada. Subcontractors and intermediaries should be treated as other businesses are treated in a particular jurisdiction with respect to the need to register or receive licences. To create special obligations in this regard for subcontractors and intermediaries would create an unnecessary regulatory burden.

Chad. (2) When there are doubts as regards the honesty of the user enterprise as far as conditions of work are concerned.

China. (2) In all circumstances.

Colombia. (2) In construction, mining, the petroleum industry and fishing.

Comoros. (2) In the case of participation in a strike, annual leave, maternity leave, and sick leave.

Costa Rica. (2) In all circumstances. (3) Mention should also be made of the obligation to prove that the subcontractor, intermediary or user enterprise is not contravening any prohibition established by legislation and that contract labour is viable.
UCCAEP: No.

Cuba. (2) Each country should define the circumstances in which they use this type of employment.

Cyprus. (1) Not necessary.

Czech Republic. SPD-ČR, KPZS-ČR: No.

Ethiopia. (1) Recourse to contract labour should be specified by regulations. (2) Registration or licensing should depend upon the subcontractor because he has access to the administrative bodies which govern contract labour.

Finland. TT, LTK, FFE: (1) The need for registration and licences should be decreased, not increased.
SAK, STTK, AKAVA: (1) Yes.

France. (1) An enterprise's manner of operation cannot be subject to authorization. This would be contrary to freedom of enterprise.

Gabon. (2) If the user enterprise make use of contract labour in relation to dismissals for economic reasons.

Germany. See under Question 11.

Ghana. (2) In circumstances where the employer is employing contract labour for his core or principal operations. (3) Registration or licensing should depend upon the subcontractor.

Greece. (1) This would allow for the institutionalization of procedures for the public authorities' control of contract labour activities, with a view of protecting the interests of the workers engaged and avoiding abuses. (2) In all circumstances, especially when subcontracting

for labour is involved. (3) National legislation should provide for criteria to define the amount of a bond, including the number of the workers engaged, the economic situation of the subcontractor or intermediary, the quality and quantity of the work done, etc.
GCGW: (1) (3) Yes.

Haiti. In all cases where the subcontractor or the intermediary is abroad, or the national resides abroad. (3) The subcontractor or the intermediary should also demonstrate that they are owners of the housing used by contract workers.

Indonesia. (2) At the time of the signing of the work contract. (3) It should depend upon the circumstances in which a legal company is established and be required every time a contract is signed.

Iraq. GCTU: (1) Yes. (2) In all circumstances. (3) Registration should be made "in conjunction with" the subcontractor and/or intermediary demonstrating its validity as a business and capacity, not depend upon it.

Israel. Histadrut: (1) (3) Yes. (2) Contract labour should only be allowed through a labour subcontractor or intermediary which is a part of a regular industry.

Japan. NIKKEIREN: No.
JTUC-RENGO: Yes.
ZENROREN: (1) Yes. (2) When there is an indication that the subcontractor and/or intermediary carries out labour-only contracting activities without being real subcontractor. (3) Yes.

Jordan. FJCC: (1) Yes. (2) In all circumstances. (3) Yes, the registration or licensing should depend upon the subcontractor or intermediary demonstrating its viability as a business and capacity to meet its obligations toward the contract workers concerned.
ACI: (1) Yes, the subcontractor should be qualified.
GFJTU: (1) Yes. (2) In all circumstances. (3) Yes.

Kenya. (2) To be determined by competent authority.

Kuwait. (1) According to an obligation which is incumbent on the subcontractor. (2) In large-scale projects, such as contracts concerning labour in oil and petro-chemical projects.

Lithuania. (2) Where work of a certain type may be performed with a licence issued in accord with established procedures.

Malaysia. (2) In hazardous occupations.

Malta. (1) This provision is necessary to eliminate subcontracting by persons operating in the "black" economy.

Mexico. (1) Yes, although such registers should not be different from those that already exist. (2) In all circumstances. (3) No, burdensome requirements can discourage the development of subcontracting services. A guarantee can be provided in the form of joint responsibility, to be supervised by the labour inspectorate.

Myanmar. (3) Not necessarily.

Namibia. (2) Occupational injuries or diseases.

Netherlands. (1) An instrument or instruments should not state that a Member is under the obligation to do this.
VNO-NCW: (1) No.
FNV, CNV, MHP: (1) No, it should be left to Members. The Convention should neither require nor exclude a licence/registration system. Such a system might be considered by a Member as an appropriate means of ensuring the protection meant in Question 8. (3) Yes, if a Member opts for a licence/registration system.

New Zealand. See *General observations.*

Nicaragua. (2) In all circumstances. (3) Yes, but add "in accordance with national law or practice".

Norway. (1) This provision should be placed in a Recommendation.
LO: (1) Yes.

Oman. (2) In all circumstances where provided by national law.

Pakistan. (2) All enterprises employing 20 or more workers.

Panama. (2) Such circumstances should be left to national law, but in all cases there should be registration. (3) The State as guarantor of social justice would need to ensure that registration depends on such conditions.

Peru. Yes, only with regard to intermediaries.

Philippines. (2) Breach of contract; in all circumstances involving contract labour.

Poland. Solidarnosc: (1) Yes. (2) Yes, this kind of regulation is particularly appropriate in circumstances where widespread abuses occur but where it is not possible to prohibit the use of contract labour. Subcontractors and intermediaries involved with migrant labour should be required to register or to obtain a licence. (3) Yes.

Portugal. This question highlights the difficulties resulting from trying to cover very different situations — for example, if there is an intermediary who does not assume the position of employer, as well as in the case of temporary work.
CGTP-IN: (1) The user enterprise may be obliged to require the subcontractor to show that specific important obligations for the protection of workers are satisfied, such as: social security registration; identification of workers assigned to contract work; existence of insurance against occupational accidents or diseases when such protection is not provided under social security.

Rwanda. CESTRAR: (1) (3) Yes. (2) In all circumstances.

Saudi Arabia. According to national legislation.

South Africa. This should be required in circumstances where, without a licensing requirement, it would be difficult or impossible for the competent authority to ensure that contract workers receive their entitlements in terms of legal or contractual obligations because employers are able to avoid monitoring and enforcement by competent authorities, i.e. primarily in sectors concerned with the supply of labour or where the services supplied consist primarily of the supply of labour, such as security services.
BSA: (1) No, this would be difficult to implement in countries with a large informal sector.

Spain. (2) Only where contract labour is provided through agencies which supply labour or provide independent subcontractors, i.e. self-employed workers or, in the case of temporary work, enterprises. (3) Yes, registration is a means of ensuring worker protection by monitoring the viability of the enterprise.
UGT: Yes.

Sri Lanka. (2) When there is a likelihood of abuse, exploitation or misuse of contract labour.

Suriname. (2) The normal legal obligations should be applicable.

Swaziland. (2) In all circumstances.

Switzerland. (1) No, when contract labour (according to Swiss legislation) involves an employment relationship. (2) (3) Certain form of contract labour, such as the supply of workers ("labour subcontracting"), should be governed by specific regulations (registration or authorization).
CUSEA: Questions 12-15: No.
CSC/CNG: (1) No.
VSA: We believe that the inclusion of an obligation by signatory States (in the Convention) respecting such a legal provision is too drastic. Such a provision could be useful in the Recommendation.

Thailand. (1) Yes. (2) In the case of the first contract. (3) Yes, but only the subcontractor should be considered for registration or licensing.

Turkey. (2) Yes, for contracts the monetary value of which exceeds an amount to be determined by States in consultation with the social partne and in terms of the statutory minimum wages in force for the branch of activity concerned.
TISK: (1) Subcontractors and/or intermediaries should be licensed and registered pursuant to the national legislation of each country.
TÜRK-IS: (1) Yes. (2) Industry and services. (3) Yes.
CPTUT: (1) Yes. (2) This is particularly appropriate in circumstances where widespread abuses occur, but where it is not possible to prohibit the use of contract labour. (3) Yes.

United Arab Emirates. (2) In all circumstances.

United Kingdom. (1) Yes, there should be an obligation on the subcontractor and/or intermediary to register with the appropriate authority. In the United Kingdom the appropriate authority, the Health and Safety Executive (HSE), only requires licences for high-risk areas/industries and the Government would not wish this to be extended. (3) See under (1).
CBI: No.
TUC: (1) Yes. (2) Regulation by such methods would be particularly appropriate in circumstances where widespread abuses occur but where contract labour cannot in practice be prohibited, and/or where subcontractors or intermediaries supply migrant contract labour.

Uruguay. (2) As defined by law.
Worker sector: (1) Yes. (2) In the case of subcontracting of manpower. (3) No.

United States. No, any consideration of contract labour supervision in the manner suggested would have to be consistent with national law and practice, including collective bargaining, as well as recognize the sovereignty of individual States. For those Members with large populations and a large workforce, the number of regulators necessary to undertake this registration may be impossible from a budget standpoint. In addition, government regulators would have to abide by United States law and practice concerning an individual's right to privacy, and regulating such a listing may invade that right.
USCIB: (1) No, it is not clear what value a registration requirement would have. The registration requirement would have the effect of encumbering the very flexibility that contract work provides to the workplace. (3) Members should be permitted to choose whichever method is most effective in their labour market.
AFL-CIO: The user enterprises should only be permitted to contract with licensed or certified contractors or intermediaries. Furthermore, we recommend that the user enterprise would remain liable for all violations of the labour contractor. To meet this obligation, user enterprises will no doubt require contractors to provide adequate bonds to meet their exposure. This will promote enforcement and adherence to the law.

Zimbabwe. (1) This will be difficult to implement.

The majority of replies to this question were in the affirmative. A number of replies proposed registration or licensing requirements in some of the circumstances mentioned above in respect of prohibition of contract labour. These included: labour supply by intermediaries; where fraud or abuse has occurred or is likely; where necessary to ensure that statutory or agreed protection is respected; in dangerous or hazardous occupations; in particular economic sectors; in the case of core activities of the user enterprise; in case of strikes or lockouts; in case of dismissal for economic reasons; and as a means of controlling the level of skills of the workers concerned. In addition, some responses suggested that the supply of migrant labour should be subject to registration or licensing requirements. Some replies have reacted negatively to this question and emphasized that the registration and bonding requirements would impose additional regulatory burdens, especially on small business. It was also stressed that (i) this might be discriminatory in relation to subcontracting enterprises, while other enterprises are not required to do so, and (ii) subcontractors and intermediaries should be treated as any other business with respect to registration or bonding requirements, if any.

While making no changes to the wording of this question, the Office has found it appropriate to provide for greater flexibility in the application of this provision and has included it in the Conclusions proposed with a view to a Recommendation *(Point 24)*.

Qu. 13 *(1) Should the instrument or instruments provide that measures should be taken to ensure that contract workers, or particular categories of contract workers, should be afforded, in specified circumstances, equal treatment with employees of the user enterprise or should be assimilated to employees of the user enterprise or, as the case may be, to employees of the subcontractor or the intermediary?*

(2) If so, in which circumstances (for example, where contract labour is used mainly or solely for the purpose of denying rights under labour or social security laws and regulations)?

Paragraph (1):

Total number of replies: 70.

Affirmative: 54. Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belarus, Benin, Bulgaria, Burundi, Cambodia, Chad, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Ethiopia, Finland, Gabon, Ghana, Greece, Haiti, Hungary, Italy, Kenya, Malaysia, Mexico, Namibia, Netherlands, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Qatar, Romania, Saudi Arabia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, Turkey, Switzerland, United Arab Emirates, Yemen, Zimbabwe.

Negative: 4. Kuwait, Nicaragua, United Kingdom, Uruguay.

Other: 12. Belgium, Brazil, Canada, China, Comoros, France, Germany, Jordan, Malta, Mauritius, Myanmar, United States.

Paragraph (2):

Total number of replies: 44.

Argentina. (2) In all circumstances.

Australia. (1) Yes. Where the same work is performed, there is the possibility that entitlements will need to be provided on similar terms. This would only be possible where the obligations of both the employee and the employer are compatible (for example, where the employees work primarily for that employer, the employer pays PAYE taxation, etc.). (2) In

Australia, if the main purpose of a contract is to deny rights which would normally accrue to the worker under labour laws and regulations, it is possible for the contract to be made void as contrary to the public interest. Workers under contracts created for such purpose are also entitled to unfair termination protection. There is therefore no objection to a provision to the effect that contract relationships entered into for the purpose of avoiding legislative provisions are deemed to be contracts of employment.

Austria. (2) When differences — in terms of contract structure — are observed in comparison with regular employees (or, where appropriate, in terms of other legal — e.g. tax — consequences), whereas no objective grounds for different treatment exist.

BAK: (1) Yes. (2) Measures should also be taken when differences — in terms of contract structure — are observed in comparison with regular workers (or, where appropriate, in terms of other legal — e.g. tax — consequences), whereas no objective grounds for different treatment exist.

Bahamas. (2) This should apply to multinational lending agencies which require highly specialized contract workers.

Bahrain. (1) Yes, as far as equal treatment is concerned. (2) Equal treatment can be afforded in various circumstances.

Barbados. (1) Yes. In circumstances relating to occupational safety and health. (2) Also, in relation to payment of social security contributions.

Belgium. (1) See the distinction that was already explained under the *General observations*. Where the workers supplied are actually under the authority of the user enterprise the reply should be affirmative as far as wages and conditions of work are considered. Where a subcontractor provides goods or renders services for a user enterprise, the wages and conditions of work that apply to the workers of the subcontractor should be those that prevail in the branch of activity of that subcontractor or in the particular enterprise of the subcontractor if no sector-level rules exist or if those rules are less favourable than the particular rules that prevail in the subcontractor's enterprise.

Benin. (1) (2) Yes. When work is performed in the user enterprise and under its control, there should be equal treatment; when work is performed in the enterprise which engages contract workers, the latter should enjoy the conditions of work applicable in that enterprise.

Brazil. (1) The instrument should provide that workers are granted essential guarantees and labour and social security protection, with attention being given to the fact that such measures should not result in disincentives or obstacles to the activities of the subcontracting enterprise. (2) In a situation which would justify the obligatory provision of equal treatment, since the measure would help to discourage unlawful practices.

CNA, CNC: (1) No.

Burundi. (2) In all circumstances.

Cambodia. (2) When contract labour is used for the purpose of denying rights under labour or social security laws.

Canada. The instrument should provide that measures should be taken to ensure that contract workers are afforded equal treatment with other employees of the subcontractor or intermediary who are performing similar duties and functions. Measures should also be taken to ensure that contract workers are assimilated either to the subcontractor/intermediary or to the user enterprise, as the context requires, in those cases where contract labour is used mainly or solely for the purpose of denying rights under labour and social security laws and regulations. Subject to the above, contract labourers and user enterprises should be free to enter into any kind of agreement under terms that both sides agree to, as long as minimum standards of employment are met. Requiring parity with the employees of the user enterprise may severely deter recourse to contract labour.

Chad. (2) When workers who in principle are temporary workers have acquired certain seniority in the user enterprise.

China. (1) Particular categories of contract workers in specified circumstances. (2) When the continuous working time of a contract worker in the same user enterprise exceeds a certain time limit, etc.

Colombia. (2) When used to avoid obligations.

Comoros. (1) Yes, as far as salaries are concerned. (2) Informal sector.

Costa Rica. (1) Yes. However, if contract workers are granted the same conditions, protection and rights as employees of the user enterprise, subcontractor or intermediary, the inevitable conclusion is that there is no reason to establish a different employment scheme: it would be inadmissible to exclude only a specific group of workers from the fundamental principles characterizing any employment relationship. (2) Perhaps it would be more appropriate to analyse whether there are cases or circumstances in which there is no assimilation; or whether there are reasons why there should be no assimilation when the same conditions in the provision of the service or the execution of the work are present. How can one speak of contract labour when such work is clearly illegal and obviously prejudicial to the workers recruited? From the labour point of view contact labour, if it is to be a viable form of employment, must be *sui generis*, i.e. it must reflect special circumstances in which no other form of recruitment is possible or at least, as a new option, it does not prejudice any of the parties concerned.
UCCAEP: Yes, if it is shown that the user enterprise is attempting to avoid its obligations as employer.

Cuba. (2) Those determined by each county, according to the principle of equality of treatment in respect of social security as well as labour legislation.

Cyprus. (1) Yes, in the case of a Recommendation.

Czech Republic. (1) We recommend defining these circumstances precisely. (2) Also, as regards occupational safety and health rights.
SPD-ČR, KPZS-ČR: (1) No.

Egypt. (1) Yes, equal treatment, in conformity with the international labour standards mentioned in reply to Question 3.

Ethiopia. (1) Yes, assimilation. (2) Yes.

Finland. (1) Yes, and in matters involving occupational safety, and where the work involved is of the same nature as that done by those in a permanent employment relationship with the company.
TT, LTK: (1) No. Obligations should apply only to the relationship between employer and employee.
FFE: (1) The position of a person who is employed in a different contract relationship should not be considered the same as that of an employee in an employment relationship. On the other hand, when a company is using labour-only contracting, it is only fair that as far as occupational safety is concerned the working conditions of contract workers are no different from those of formal employees doing the same work.
SAK, STTK, AKAVA: (1) Yes.

France. (1) It is not possible to apply the principle of equal treatment between the employees of a subcontractor and those of a user enterprise, i.e. between two independent enterprise whose employees are covered by the collective agreement concluded in their specific sector of economic activity. The subcontractor is the single employer of the workers it engages and is the only responsible for the application of labour law rules. If the employees of the subcontractor are integrated into the business of the user and become beneficiaries of the same conditions of work or remuneration which the employees of the user enterprise enjoy, it would constitute illegal subcontracting.

Gabon. (2) While performing similar work.

Germany. See under Question 11.
DGB: Equal treatment of contract workers is of fundamental importance.

Ghana. (2) As indicated in this subparagraph.

Greece. (2) When contract workers work on the premises of the user enterprise; when workers are made available to the user enterprise by the intermediary, irrespective of the place where work is being performed; when the subcontracting is being utilized solely for the purpose of avoiding labour law and social security responsibilities.

GCGW: (1) In all circumstances. (2) Certainly a provision should be envisaged to outlaw the use of contract labour mainly or solely for the purpose of denying employer responsibilities under labour and social security laws, including the issues enlisted in Question 8.

Haiti. (2) Equal treatment should be afforded in the following circumstances: equal salary for those having similar qualifications; occupational accidents; occupational diseases; maternity protection; hours of work.

Hungary. Employer organizations: (1) No, this provision would be a rude violation of contractual liberty.

Indonesia. (1) They should be afforded equal treatment with employees of the user enterprise. (2) All workers' rights as stipulated in laws and regulations.

Iraq. GFTU: (1) Yes.

Israel. Histadrut: (1) Yes. (2) When contract labour is used against regular employees or to erode their terms and conditions of employment.

Japan. NIKKEIREN: The terms and conditions of contract labour are decided between a contract worker and a subcontractor. It is not necessary to compare it with that of employees of the user enterprise. A uniform provision, therefore, should not be made on this issue. If contract workers are not self-employed, they are usually considered as employees of a subcontractor.

JTUC-RENGO: In cases where they are doing essentially the same work, equal treatment should be guaranteed. In other cases, the principle of equal wage for equal work should apply. Regulations should stipulated that they must be given priority in becoming regular workers.

ZENROREN: (1) Contract workers, or particular categories of contract workers, should in specified circumstances, be afforded, equal treatment with employees of the user enterprise. (2) Yes. Also, when the user enterprise uses a subsidiary or affiliated company dominated by that enterprise itself as its subcontractor or intermediary.

Jordan. (2) In all circumstances.
FJCC: (1) No.
ACI: (1) In accordance with the agreement and terms of the contract.
GFJTU: (1) Yes.

Kuwait. (1) No.

Malaysia. (2) Where contract workers are engaged to work for the user enterprise on a piece-rate basis and work to fixed time schedules.

Malta. (1) No. It should be left to the trade unions and to employers' organizations to bargain according to the special circumstances of the case.

Mauritius. It is suggested that this question be left to Members' discretion.

Mexico. (1) Yes, in a spirit of joint responsibility and without infringing the collective agreement(s). In the case of auxiliary, support or maintenance activities, the contract worker may continue to be subject to their special rules, which must not be below the minimum standards laid down by law, since they will work under the same conditions and enjoy the same rights as the employees of the enterprise, as stated under Question 10. Where they are employees of the subcontractor or intermediary, the instrument should provide that these workers should receive not only equal treatment but also equal remuneration and social benefits, based on the premise laid down in section 86 of Mexico's Federal Labour Act — "Equal pay shall be given for equal work performed in equal posts, hours of work and conditions of efficiency" — provided that the workers belong to the same enterprise. (2) In this case an employment relationship should be deemed by law to exist between the contract workers and the user enterprise.

Myanmar. (1) User enterprise. (2) If and when the contract worker has a valid grievance.

Namibia. (2) Remuneration in general; compensation in terms of occupational accidents; maternity benefits.

Netherlands. (1) Yes, but some instances could justify an exception. The provision should therefore be in a Recommendation. (2) This should be left to Members.

VNO-NCW: (1) Yes, provided exceptions are possible. (2) This should be left to the Members.

FNV, CNV, MHP: (1) The Convention should provide for equal treatment with or assimilation to employees of the user enterprise as regards health and safety, maternity protection, compensation in case of occupational accidents or disease, safeguards in respect of the protection of workers' claims and government-sponsored training facilities. The same should be required on principle as regards remuneration, unless an applicable collective agreement stipulates otherwise. (2) It should be left to Members' legislation and court decisions to determine the circumstances in which an assimilation of contract worker's formal (legal) employment status to that of employees of the enterprise is appropriate. Should the instrument refer to specific circumstances, this should be considered as only a minimum provision that does not preclude a more complete application of the principle of equal treatment and assimilation.

New Zealand. (1) (2) See *General observations* and under Question 5.

Nicaragua. (1) No. Since the intention is to protect contract workers, they should always be afforded equal treatment with employees of the user enterprise.

Niger. (2) In similar conditions of work, qualification and productivity.

Norway. (1) Yes, where the contract labour is used mainly or solely for the purpose of denying rights under labour or social security laws and regulations.

Oman. (2) Yes.

Pakistan. (1) Yes. The legal rights should be the same as far as working conditions are concerned.

Panama. (1) The workers concerned should be guaranteed all the rights granted to other workers of the user enterprise; any other practice would be discriminatory. The subcontractor and the user enterprise should be jointly and severally responsible for guaranteeing such rights.

Peru. (1) Workers supplied through temporary work enterprises should be paid not less than workers in the user enterprise carrying out similar work. If comparison is impossible, such workers should be paid not less than the monthly living wage and be entitled to all social benefits established under regulations pertaining to the private sector.

Philippines. (2) Yes.

Poland. Solidarnosc: (1) Yes. (2) These means should be applied wherever possible and in all cases where intermediaries are involved.

Portugal. (1) Yes, equal treatment with employees of the user enterprise, where applicable, as in the case of temporary work and the mere provision of labour. In this way account could be taken of the need for flexibility advocated by the CIP. (2) At least in these circumstances. However, to protect the employment of workers in the user enterprise, it would be appropriate to apply the principle of equal treatment in all circumstances.

Qatar. (1) Yes, contract workers should enjoy equal treatment with employees of the user enterprise. (2) Yes.

Rwanda. CESTRAR: (1) Yes. (2) In all circumstances.

Saudi Arabia. (2) In case of equal work.

South Africa. (1) Yes, as far as equal treatment is concerned. (2) Especially where contract workers are either former employees of the user enterprise, or are performing functions formerly performed — or substantially the same functions as those performed — by employees of the user enterprise.
BSA: No.

Spain. (1) Yes, one of the main purposes of this Convention is to guarantee a level of social protection and conditions of employment similar to those of regular employees of the user enterprise. (2) Also, where permanent work is unlawfully and repeatedly disguised as casual work.
UGT: Contract workers should receive equal treatment whenever they have similar functions and categories. In other cases, a comparison of categories and workplaces should be made with those of the regular workforce in the user enterprise to ensure that basic rights are comparable.

Sri Lanka. (2) In the circumstances mentioned.

Sudan. (2) In all circumstances.

Suriname. (2) In case of occupational accident or disease in the user enterprise.

Swaziland. (2) In all circumstances.

Switzerland. (2) When, for example, equal treatment is envisaged in the collective agreement in force in the user enterprise — though it might be limited to certain elements such as remuneration or hours of work.
CSC/CNG: (1) (2) Yes.
VSA: (1) Yes.

Turkey. (2) Only when the user enterprise and the subcontractor or intermediary are in the same branch of activity.
TISK: (1) No, this cannot be imposed in the case of contract labour.
TÜRK-IS: (1) Yes.
CPTUT: Wherever possible, and in all cases where intermediaries are involved.

Thailand. (2) The principle of equal treatment should be applied for equal work of the same quantity and quality.

United Arab Emirates. (2) In all circumstances.

United Kingdom. CBI: Absolutely not.
TUC: Yes.

United States. (1) The concept of federalism would probably prevent the United States Government from supporting this proposal. Except where the protection is provided for in national legislation, there would be little or no possibility of one State influencing another — or of any outside influence on collective bargaining — with a view to achieving such a result. The "equal treatment" suggested here would appear to be impossible to implement. The Government should, however, call attention to the legal requirement of equal pay for substantially equal work and of nondiscriminatory employment of women in all occupations (even those not traditionally thought of as "women's jobs").
USCIB: (1) No, this would have the effect of reducing work opportunities for workseekers. The instrument should not contain provisions that would exacerbate the most important labour market problem facing nearly all Member countries, i.e. unemployment.
AFL-CIO: The AFL-CIO recommends that contract workers be integrated, where appropriate, into the user enterprise's internal labour market for purposes of job-related actions, including lay-off, promotion, training, benefits, and compensation structures.

Uruguay. Worker sector: (1) Yes, in the circumstances described in (2).

Yemen. (2) Whenever the subcontractor has continuous activities and performs work similar to that of the user enterprise, with the same conditions and qualifications. Equal treatment should apply in such field as wages, working conditions, occupational safety and health, and social security, and in some branches where contract labour is permanently used, such as transport, construction, oil and manufacturing.

Zimbabwe. (2) Hours of work, sick leave, maternity leave benefits.

Although the majority of replies to this question were in the affirmative, certain replies differentiated between the circumstances in which equal treatment would be appropriate and those in which assimilation would be appropriate. A number of replies emphasized that equality of treatment should be afforded for performing similar work, under similar conditions and requiring similar qualifications. The Office has therefore made appropriate changes to this Point and included it in the Proposed Conclusions with a view to a Recommendation *(Points 18)*. As regards assimilation, proposals were made to confine the application of this provision to situations where contract labour is resorted to mainly or solely with a view to denying rights or avoiding obligations under existing laws and regulations. Since this kind of protection against abuses is actually one of the main objectives that the possible instrument(s) aim to accomplish, the Office has found it appropriate to include a Point in the Proposed Conclusions with a view to a Convention *(Point 11)* requiring Members to take measures to ensure that contract labour is not used for this purpose, and a Point in the Proposed Conclusions with a view to a Recommendation *(Point 19)* indicating that this is one of the circumstances in which assimilation would be appropriate.

Qu. 14 *(1) Should the instrument or instruments provide that, in circumstances specified by national law, financial obligations toward a contract worker should be jointly and severally shared by the subcontractor and the user enterprise, or by the intermediary and the user enterprise, as the case may be?*

(2) If so, in which circumstances?

Paragraph (1):

Total number of replies: 74.

Affirmative: 50. Argentina, Australia, Austria, Bahamas, Bahrain, Belarus, Benin, Brazil, Bulgaria, Burundi, Cambodia, Chad, China, Cuba, Cyprus, Czech Republic, Egypt, Estonia, Ethiopia, France, Gabon, Ghana, Greece, Haiti, Indonesia, Jordan, Italy, Kenya, Kuwait, Lithuania, Malaysia, Mauritius, Mexico, Namibia, Nicaragua, Oman, Pakistan, Panama, Philippines, Qatar, Saudi Arabia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Turkey, Thailand, United States, Yemen.

Negative: 11. Barbados, Colombia, Denmark, Myanmar, Norway, Portugal, Romania, Swaziland, United Kingdom, Uruguay, Zimbabwe.

Other: 13. Belgium, Finland, Canada, Comoros, Costa Rica, Germany, Hungary, Malta, Netherlands, Peru, Slovakia, Switzerland, United Arab Emirates.

Paragraph (2):

Total number of replies: 34.

Argentina. (2) In case of insolvency and/or when the subcontractor fails to fulfil its obligations.

Australia. (1) If consistent with other ILO instruments, the word "national" is taken to mean "Federal and/or State/Territory", this would be acceptable. (2) The determination of the circumstances should be left to the discretion of Members.

Austria. (2) If the user enterprise does not meet its contractual commitments towards the contractor.

BAK: (1) Yes. (2) See under Question 13 (2).

Bahamas. (2) In all circumstances.

Bahrain. (2) In cases of violation of laws and regulations; apparent abuses; acts intended to evade the fulfilment of obligations envisaged in laws and regulations, or in contracts.

Barbados. (1) No. The only entity responsible for financial obligations to the self-contractual person is the user enterprise.

Belgium. As explained in the reply to Question 13, the application of such a rule to any form of subcontracting (whether abusive or arranged within the general framework of normal subcontracting) may lead eventually to abolishing subcontracting completely, which should not be the purpose of ILO instruments.

Brazil. (2) The principle of joint and several responsibility could apply at least as regards wage obligations, occupational safety and health and other basic rights of workers, if the subcontractor carries out activities which constitute the main objective of the user enterprise.

CNA, CNC: (1) No.

Burundi. (2) Among other things, in the case of insolvency or bankruptcy.

Cambodia. (2) In circumstances specified in national laws.

Canada. Replace "in circumstances specified by national law" by "to the extent specified by national law". This would accommodate individual jurisdictions which may wish to provide for such joint liability in particular circumstances, as well as those which choose to adopt different approaches.

Chad. (2) When the contract workers are not considered as employees of the user enterprise, or are treated unequally in relation to the regular employees of the user enterprise, or when the user enterprise refuses to assimilate contract workers to its own employees.

China. (2) Statutory and obligatory insurance.

Comoros. (1) Not necessary.

Costa Rica. (1) It is clear that this kind of employment requires meticulous regulation, especially as regards aspects which may give rise to abuse. Thus in so far as the subcontracting party — whether user enterprise, subcontractor or intermediary — continues to predominate over the contract worker because of an inherent superiority, and the contract worker continues to be dependent to a greater or less extent, there must be a real guarantee of the pecuniary benefits accruing to the contract worker, particularly when, as in the case of "normal" recruitment, there is no way of anticipating any possible non-compliance. (2) In all circumstances.

UCCAEP: Responsibility should be borne on a joint and several basis by the user enterprise and by the intermediary or the parties to deceitful practice.

Cuba. (2) As determined by each country.

Cyprus. (1) Yes, particularly as regards payment of wages, social security contributions and annual leave.

Denmark. No. On the contrary, there is a need to lay down provisions which ensure that national law and practice determine whether it is the intermediary or the user enterprise that is responsible for the financial obligations. This could be done by including this provision in the contract between the employee and the intermediary.

Ethiopia. (1) Yes, by the subcontractor and the user enterprise.

Finland. (1) Such joint and shared obligations are not recognized in Finnish legislation, and including such provisions in the instrument may therefore present an obstacle to ratification.

TT, LTK, FFE: (1) No, there should not be a provision for joint and several financial obligations. The employer in independently liable. The suggested model would lead to a situation where the enterprise may have to pay twice for the work it has bought: first to the supplier of the work, and then to the employees of that supplier.

SAK, STTK, AKAVA: (1) Yes.

France. Questions 14-16. Yes. The Labour Code of France provides that in the case of the subcontractor's insolvency, the user enterprise should be held responsible for the payment of wages, leave with pay, the obligations resulting from the legislation governing social insurance, employment injuries, occupational diseases and family benefits. The employees affected and the social security bodies can therefore, in the case of the subcontractor's insolvency, engage a direct action against the management of the enterprise for which the work was actually performed. If, in spite of appearances, the subcontractor is nothing but a façade, the judiciary regards the user enterprise as an real employer responsible for payment of wages and social contributions.

Gabon. (2) In the case of insolvency of the party responsible for such payments.

Germany. See under Question 11.

DGB: Joint and several responsibility is supported. Any division of liability should be avoided. According to German law joint and several liability and proportional liability are mutually exclusive.

Ghana. (2) When there is an occupational accident.

Greece. (1) Yes. However, the user enterprise should be responsible toward workers engaged in subcontracting only within the limits of the economic value of the arrangement with the subcontractor or intermediary, taking into account the amount of the bond which they have to deposit. (2) In case of insolvency of the subcontractor or intermediary (account should be taken of the existence of an instrument guaranteeing the claims of the workers) when the subcontractor or intermediary is not registered or has no permit issued by the competent authority; when it concerns the "regular" or "principle" activities of the user enterprise.

GCGW: (1) Yes, except where national legislation provide for institutions guaranteeing workers' legitimate claims.

Hungary. Questions 14-18. Government and trade unions: It is suggested that a provision be included to the effect that if the actual employer does not meet payment (salary, social security, etc.) obligations, these have to be paid by the original employer. In respect of safety regulations and liabilities it would be desirable to affirm the liability of the employer providing the machinery, equipment, tools and materials or to declare shared liability between the two employers.

Employer organizations: Questions 14-16. In the majority of cases the intermediary cannot be responsible; if he/she is, this has to be stated in the contract.

Indonesia. (1) Yes, it should be shared jointly or severally by the subcontractor and the user enterprise, particularly if it relates to financial responsibility to meet the obligation to protect contract labour. (2) In certain circumstances, where funds should be allocated for repatriation to or sending contract workers from their place of origin, accident and occupational diseases, wage payment, etc.

Iraq. GFTU: (1) Yes. (2) Where one party does not fulfil its financial obligations.

Israel. Histadrut: (1) Yes. (2) In all circumstances where national laws and regulations are absent or insufficient to guarantee that such obligations are met by the subcontractor or intermediary alone.

Japan. NIKKEIREN: Since the distribution of financial obligations varies according to the content of individual contract and national laws, a uniform provision should not be made on this subject.

JTUC-RENGO: Financial obligations lie with the user enterprise, who should share responsibility when appropriate.

ZENROREN: (1) Yes. (2) When the wage or salary due to a contract worker is not paid, the user enterprise should pay.

Jordan. FJCC: (1) Yes. (2) In all circumstances.

ACI: (1) Yes. According to the terms of the contract and the Labour Code, the employment relationship ends when the work has been completed and paid for.

GFJTU: (1) No.

Kenya. Yes, when the subcontractor becomes insolvent.

Kuwait. (1) Yes, on the understanding that financial obligations towards a contract worker should be met by the subcontractor and the user enterprise. (2) In the exceptional circumstances in which contract labour is allowed.

Malaysia. (2) Where wages are due to the subcontractor's or intermediary's workers for a period not exceeding one month.

Malta. This is a debatable issue.

Mauritius. (2) In all circumstances.

Namibia. (2) Where the company suffers economic hardships.

Mexico. (1) Yes, the extent of joint responsibility should be clearly established in the subcontracting contracts when the work is carried out using the resources of the enterprise, so that both the subcontractor or intermediary and the user enterprise are jointly responsible for obligations towards the workers. (2) In all cases.

Netherlands. See under Question 16.

VNO-NCW: Financial obligations to contract workers should be ensured. This can be arranged in various ways, but it should be left to Members to decide how.

FNV, CNV, MHP: It should be left to Members to determine the means by which to ensure that financial obligations toward a contract worker will be safeguarded. The instrument(s) may enumerate these means.

New Zealand. (1) See *General observations.*

Nicaragua. (1) Financial obligations towards a contract worker should always be jointly and severally shared by the subcontractor, or by the intermediary and the user enterprise. (2) In all circumstances.

Niger. (2) In all circumstances.

Norway. Questions 14-16. No. According to Norwegian law the employer has the liability with respect to financial obligations towards the employees. In practice, however, the employer's liability may concern various matters. Therefore, it is important not to establish joint and several liability as a general rule.

LO: (1) Yes.

Oman. (2) In all circumstances.

Panama. (1) See under Question 13 (1).

Peru. Questions 14-16. In Peru joint and several liability is not automatic and must be specifically stipulated by law or in a collective agreement. The instrument should not apportion any responsibility whatsoever to the user enterprise for meeting financial obligations as these are only incumbent upon the employer. User enterprises in Peru are only obliged to inform the employers of contract workers of the income and working conditions of such workers. Supreme Resolution No. 27 of 15 March 1995, pertaining to public works, establishes joint and several liability between the project manager and the subcontractor with regard to the payment of workers' social benefits.

Philippines. (2) With respect to claims arising from the employer-employee relationship.

Poland. Solidarnosc: (1) Yes. (2) Especially in cases of abuse and when governments, for whatever reason, do not regulate subcontractors.

Qatar. (2) In all circumstances.

Rwanda. CESTRAR: (1) Yes. (2) In all circumstances.

Saudi Arabia. (2) When the work undertaken by the subcontractor belongs originally to the employer.

South Africa. (2) Where the subcontractor or intermediary is in fact a supplier of labour (even if formally the supplier of a service, e.g. a supplier of security services); where, because of the structure of the industry or the nature of the activity, there is likelihood of the subcontractor or intermediary avoiding legal obligations to contract workers.

BSA: No.

Sri Lanka. (2) In the case of insolvency of the subcontractor.

Sudan. (2) In all circumstances.

Slovakia. Questions 14-16. Instrument(s) should provide for an equal and balanced distribution of responsibility between a "subcontractor" and a "user enterprise", or between an "intermediary" and a "user enterprise" for the fulfilment of obligations towards contract workers.

Spain. (2) As regards the obligation to pay wages and provide social security coverage, as well as occupational health and safety and working conditions.

UGT: Yes, as regards all basic rights of contract workers, and in all cases as regards occupational safety and health, wage obligations, social contributions and benefits, and supplementary pensions.

Switzerland. Questions 14 and 15. This should be left to national law and practice.

CSC/CNG: (1) Yes. (2) In case of violation of legislation concerning conditions of work.

VSA: (1) Yes.

Thailand. (2) In every circumstance.

Turkey. (2) Only when the user enterprise employs its own employees in the same workplace.

TISK: (1) It would be appropriate to determine certain guidelines for sharing joint or several liability under circumstances specified by national laws.

TÜRK-IS: (1) Yes.

CPTUT: (1) Yes. (2) Where patterns of abuse are present and where the government, for whatever reason, does not regulate subcontractors.

United Arab Emirates. (1) The subcontractor. (2) In all circumstances.

United Kingdom. CBI: No. This ignores what is often one of chief purposes for using contractors, i.e. to use their services for a specific project rather than enter into a relationship with liabilities which would outweigh the benefits.

TUC: (1) Yes, where possible. (2) Wherever possible, in particular where patterns of abuse exist but where the government does not regulate subcontractors.

United States. USCIB: (1) No, this would not be necessary in view of the provision described in Question 12 (3).

AFL-CIO: The user enterprise should be jointly and severally responsible with the contractor for all employment-related obligations toward the worker.

Uruguay. Worker sector: (1) Yes. (2) Fraud or insolvency.

Yemen. (1) Yes, in cases of the subcontractor's failure to meet its obligations.

Zimbabwe. (1) No, each employer should individually meet its financial obligations.

See Office commentary under Question 18.

Qu. 15

(1) In the absence of joint and several liability, should the instrument or instruments provide that, when a contract worker is supplied to a user enterprise by a subcontractor or an intermediary, and when the party normally responsible for fulfilling the financial obligations towards the contract workers does not meet them, the other party should, in specified circumstances, be responsible for doing so?

(2) If so, in which circumstances?

Paragraph (1):

Total number of replies: 76.

Affirmative: 46. Austria, Bahamas, Bahrain, Benin, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Czech Republic, Egypt, El Salvador, Ethiopia, France, Gabon, Ghana, Greece, Haiti, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Mauritius, Mexico, Namibia, Oman, Panama, Philippines, Portugal, Saudi Arabia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Thailand, United Arab Emirates, United States, Yemen.

Negative: 16. Australia, Barbados, Belarus, Bulgaria, Cyprus, Denmark, Myanmar, Norway, Pakistan, Qatar, Romania, Suriname, Turkey, United Kingdom, Uruguay, Zimbabwe.

Other: 14. Belgium, Brazil, Estonia, Finland, Germany, Hungary, Mali, Malta, Netherlands, Nicaragua, Niger, Peru, Slovakia, Switzerland.

Paragraph (2):

Total number of replies: 30.

Argentina. (2) When the subcontractor receives a salary or wage and any other payments due to the contract worker or to the bodies in charge of the financing of social security.

Australia. No. It is inappropriate to place a liability on an enterprise which is not party to the contractual relationship (i.e. which lacks privity of contract).

Austria. (2) See under Question 13 (2).
BAK: (1) Yes. (2) See under Questions 13 (2) and 14 (2).

Bahamas. (2) In all circumstances.

Barbados. Barbados Workers' Union (BWV): (1) Yes.

Belgium. See under Questions 13 and 14.

Benin. (2) In case of non-payment of salaries and social security contributions, especially for occupational risks.

Brazil. In the absence of joint and several liability, responsibility should fall mainly on the subcontractor, who has an immediate and direct relationship with the worker. The instrument should be limited to providing that national legislation will determine by what method and by whom failure to comply with the labour obligations towards contract workers should be resolved.
CNA, CNC: (1) No.

Burundi. (2) Among other things, in the case of insolvency or bankruptcy.

Cambodia. (2) In circumstances specified in national laws.

Canada. (2) For example, when the subcontractor or intermediary is insolvent and is not likely to be in a position to meet its financial obligations in the foreseeable future. This should, however, be subject to priorities established by law and practice in the event of bankruptcies and insolvencies.

Chad. (2) In the event of insolvency of the subcontractor or intermediary, the user enterprise should thake their place.

China. (2) For example, when the reason that a party does not meet its financial obligations does not lie with the contract worker.

Colombia. (2) When the enterprise is not registered or has no operating licence.

Costa Rica. (1) It is only proper that the party which has benefited from the work carried out by contract workers should be the one to assume the most liability. However, there are many reasons why a contract worker may suffer prejudice in this respect, since the contract is concluded in the first instance with a subcontractor or intermediary and it may not be clear who really represents the user enterprise. In order to achieve the proposed objective, it would be appropriate for both formula to be combined, so that in the event of non-compliance by the user enterprise, which has the main obligation, the other two parties involved should be jointly liable.
UCCAEP: No.

Cuba. (2) As determined by each country.

Czech Republic. SPD-ČR, KPZS-ČR: (1) No.

Estonia. (1) Financial obligations toward contract workers might be brought closer to those vis-à-vis regular employees.

Ethiopia. (1) Yes, by the user enterprise.

Finland. (1) In Finland the wages of workers in an employment relationship are secured by the wage security system.
TT, LTK, FFE: (1) See under Question 14.
SAK, STTK, AKAVA: (1) Yes, although this offers a less secure guarantee.

France. (1) See under Question 14.

Gabon. (2) When the financial situation of the responsible party does not allow this.

Germany. See under Question 11.

Ghana. (2) See under Question 14 (2).

Greece. Yes, see under Question 14.
GCGW: (1) In the absence of joint and several responsibility, the instruments should provide that when the party normally regarded as responsible fails to meet its obligations, another party should be held responsible.

Haiti. (2) In all circumstances, including insolvency.

Indonesia. (1) The subcontractor or intermediary should be responsible for meeting its financial obligations.

Iraq. GFTU: (1) No.

Israel. Histadrut: (1) Yes. (2) See under Question 14.

Japan. NIKKEIREN: Questions 15 and 16. Since work to be performed is determined by the contract between a contract worker and a subcontractor, the responsibility for meeting financial obligations should be borne only by the subcontractor unless otherwise provided by a special agreement.

JTUC-RENGO, ZENROREN: (1) Yes. (2) Where a subcontractor does not meet its financial obligations, the principle should be that the user company share responsibility.

Jordan. FJCC: (1) Yes. (2) In all circumstances.
ACI: (1) Yes.
GFJTU: (1) Not necessary.

Kenya. (2) See under Question 14.

Kuwait. (2) When the contract worker is engaged in the user enterprise by means of an intermediary, the responsibility should be shared by both the intermediary and the user enterprise.

Malaysia. (2) See under Question 14.

Mali. (1) In the event of insolvency of the user enterprise, the subcontractor should take its place.

Malta. (1) When the subcontractor is an employment agency, or when he provides a service which forms an integral part of the production process of the firm, including the delivery of the employers' products, the employer should share liability for meeting the workers' claims.

Mauritius. (2) Especially as far as wages and compensation for occupational accidents are concerned.

Mexico. (2) Contracts between workers and enterprises and between subcontractors and user enterprises should clearly state that, in case of doubt, the interpretation that is most favourable to the workers should apply.

Namibia. (2) See under Question 14.

Netherlands. See under Question 16.
VNO-NCW: See under Question 14.
FNV, CNV, MHP: See under Question 14.

New Zealand. (1) See *General observations.*

Nicaragua. (1) Yes. The responsibility should always be shared.

Niger. (1) There should be joint and several responsibility to avoid the risk of non-payments.

Oman. (2) In all circumstances.

Pakistan. (1) No. The subcontractor should be primarily responsible for this, and the user enterprise only if the subcontractor fails to meet its obligation.

Peru. See under Question 14.

Philippines. (2) In all circumstances, and specifically as regards payment of wages, safety, social and welfare benefits.

Poland. Solidarnosc: (1) Yes.

Portugal. Yes, but for a Recommendation only.

Rwanda. CESTRAR: (1) Yes. (2) In all circumstances.

Saudi Arabia. (2) According to national legislation.

South Africa. (2) See under Question 14.
BSA: No, this would be an open invitation for the party normally responsible for fulfilling the obligations towards contract workers not to fulfil them. However, in the case of labour

brokers as defined in South Africa's Labour Relations Act and where the labour broker does not fulfil its obligations, a case might be made for the user enterprise meeting the obligations.

Spain. (2) In the circumstances indicated under Question 14 and in the event of the subcontractor's insolvency.
UGT: The liability, to be effective, must be joint and several, since if it is subsidiary or alternative, the complaint procedure is much more complex for the worker concerned. This should also apply to financial and safety and health obligations; or, at least, the instrument(s) should establish subsidiary liability, it being possible to address the complaint to both at the same time.

Sri Lanka. (2) In the case of insolvency and similar circumstances.

Swaziland. (2) In all cases.

Switzerland. See under Question 14.
CSC/CNG: (1) Yes.
VSA: (1) Yes.

Thailand. (1) Yes, but the principle of joint and several liability is preferable.

Turkey. TISK: (1) Yes.
TÜRK-IS: (1) Yes.
CPTUT: (1) Yes. (2) In circumstances where it is not possible to establish joint and several liability.

United Arab Emirates. (2) It is preferable to make provision in the agreement concluded between the subcontractor and the user enterprise.

United Kingdom. No, see under Question 14.
TUC: (1) Yes, but only where it is not possible to establish joint and several liability, which should be the preferred method to locate responsibility.

United States. USCIB: (1) No, this provision would not be necessary in view of the provision described in Question 12 (3).

Uruguay. Worker sector: See under Question 14 (1).

Zimbabwe. (1) No, in all circumstances it should be clear who the employer is.

See Office Commentary under Question 18.

Qu. 16 *(1) Should the instrument or instruments provide that, in circumstances specified by national laws and regulations, national law and practice may apportion responsibility between the subcontractor and the user enterprise, or between the intermediary and the user enterprise, as the case may be, for fulfilling towards contract workers the obligations that are normally incumbent upon an employer?*

(2) If so, in which circumstances?

Paragraph (1):

Total number of replies: 71.

Affirmative: 37. Argentina, Australia, Austria, Bahrain, Belgium, Benin, Cambodia, Canada, China, Comoros, Cuba, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, France, Ghana, Greece, Indonesia, Italy, Jordan, Kenya, Kuwait, Mauritius, Myanmar, Namibia, Oman, Philippines, Portugal, Saudi Arabia, Sri Lanka, South Africa, Spain, Qatar, United Arab Emirates, Yemen.

Negative: 18. Barbados, Belarus, Bulgaria, Chad, Colombia, Cyprus, El Salvador, Gabon, Mexico, Norway, Pakistan, Romania, Suriname, Swaziland, Turkey, United Kingdom, Uruguay, Zimbabwe.

Other: 16. Brazil, Burundi, Costa Rica, Germany, Hungary, Malaysia, Malta, Netherlands, Nicaragua, Niger, Panama, Peru, Slovakia, Switzerland, Thailand, United States.

Paragraph (2):

Total number of replies: 23.

Argentina. (2) In the case of fraud affecting the workers.

Australia. (1) This provision could be included; however, the precise circumstances in which liability is shared should be left to the discretion of individual Members.

Austria. Occupational safety and health responsibilities may, as in Question 17 (1), be attributed primarily to the user enterprise; if, however, the intermediary or subcontractor is, or can reasonably be expected to be, informed of a serious breach of these obligations by the user enterprise, they should bear an equal share of the responsibility.
AK: Reply similar to that of the Government.

Bahrain. (2) In all circumstances.
Employer sector: Compensation should be awarded only in cases of occupational injuries and separation benefits.

Barbados. BWU: (1) Yes.

Belgium. (1) Such measures should only be proposed where abuses are to be feared which would deprive the worker of his or her legitimate rights.

Benin. See under Question 15 (2).

Brazil. See under Questions 14 and 15.
CNA, CNC: (1) No.

Burundi. (1) In principle, the subcontractor is primarily responsible. (2) The circumstances should be exceptional.

Cambodia. (2) In circumstances specified in national laws.

Canada. (1) Yes. Obligations may be apportioned according to who has control over the circumstances under which an individual is employed. For example, a subcontractor or intermediary may have a responsibility to inform an individual that they have certain health and safety rights, such as access to information on hazardous substances; the user enterprise would have obligations relating to the premises, e.g. building safety, fire exits, etc., and to provide information that would be relevant in the actual job setting.

Chad. (1) No. Basically, both the subcontractor and intermediary depend economically on the user enterprise. While everyone assumes its own responsibilities, in case of financial difficulties the principal employer intervenes to protect the workers' rights.

China. (2) Through the arrangement between the intermediary or the subcontractor and the user enterprise.

Comoros. (2) In all circumstances.

Costa Rica. See under Question 15. It should also be noted here that the intermediary is generally a party without its own capital and is a "bridge" between the user enterprise and the workers.

UCCAEP: No. Such responsibility should be joint and several, especially as regards fines and compensations.

Cyprus. (1) There should be a clear definition of who is responsible for fulfilling the obligations towards the workers concerned, i.e. who is considered to be an employer.

Cuba. (2) As determined by each country.

Czech Republic. SPD-ČR, KPZS-ČR: (1) No.

Denmark. Yes. See under Question 14.

El Salvador. No, only the user enterprise and the subcontractor are jointly responsible for the obligations arising from the provision of services by the subcontractors' workers; no intermediary should be included unless he is a party to the employment contract in question.

Ethiopia. (1) Yes, between the subcontractor and the user enterprise.

Finland. (1) See under Questions 14 and 15.

France. (1) See under Question 14.

Germany. See under Question 11.

Ghana. (2) See under Question 14 (2).

Greece. (2) When the contract workers are made available to the user enterprise; when the user enterprise exercises control and decisive power over the conditions of work and employment of these workers.

GCGW: (1) Yes. (2) For example, in case of the employer's failure to fulfil its responsibilities or, in case of workers' claims, because of the user's particular instructions.

Indonesia. The rights of contract workers could be protected by the adoption of new laws and regulations, government policy, economic situation changes, etc.

Iraq. GFTU: (1) No.

Israel. Histadrut: Yes. This approach should be used only where the subcontractor and/or intermediary and the user enterprise are all established, solvent and legitimate.

Japan. JTUC-RENGO: The employer's liability lies with the user enterprise, which should share responsibility, when appropriate.

ZENROREN: (1) It is not reasonable to apportion responsibility uniformly. The instrument(s) should provide that the subcontractor is primarily responsible and the user enterprise is secondarily and jointly responsible.

Jordan. FJCC: (1) Yes. (2) In all circumstances.

ACI: (1) Reference should be made to common law.

GFJTU: (1) Yes. (2) In all circumstances.

Kuwait. (2) Between the intermediary and the user enterprise.

Malaysia. (1) Not necessary, so long as the financial obligation of the user enterprise is provided for, as under Question 14.

Malta. (1) When the subcontractor provides a service which forms an integral part of the production process of the user firm, including the delivery of the products, the employer should share liability for meeting claims by the workers involved.

Mauritius. (2) Up to the threshold agreed to by the employer.

Mexico. (1) No, the responsibility should be clearly assigned and workers' minimum rights guaranteed in all cases. No worker should have to claim his or her rights from two or more enterprises sharing responsibility. Joint responsibility should be understood as meaning the obligation of the contracting enterprise (user enterprise and subcontractor) to fulfil the obligations of the other when they have not been met and it is impossible to make the enterprise that is responsible in the first instance meet its obligations.

Myanmar. (2) In cases when the employer has the liability to observe his responsibility towards the contract worker according to the existing national labour law and practice.

Namibia. (2) Insolvency; and where a contract might be terminated under unexpected conditions.

Netherlands. The financial obligations toward the contract workers should be ensured as fully as possible by a Member. Depending on what this means, it can be arranged in various ways. That is why the choice of solution should be left to a Member. Furthermore, an insolvency procedure via unemployment insurance (maximum three months in the Netherlands) could offer some consolation. This is provided for in the Dutch Unemployment Act (articles 61-68) if the wage obligations cannot be fulfilled.
VNO-NCW: See under Question 14.
FNV, CNV, MHP: See under Question 14.

New Zealand. (1) See *General observations.*

Nicaragua. (1) Since the responsibility should be shared in all circumstances, we suggest that a percentage of that responsibility could be established for each of the parties (subcontractor or intermediary, as the case may be, and the enterprise).

Niger. (1) There should be joint and several responsibility.

Oman. (2) In all circumstances.

Pakistan. (1) See under Question 15.

Panama. (1) There should be joint and several responsibility.

Peru. See under Question 14.

Philippines. (2) Where the claim arises from employer-employee relationship.

Poland. Solidarnosc: (1) Yes. (2) This should be limited to circumstances where both the user enterprise and the subcontractor are established, solvent and legitimate.

Portugal. (1) Yes, as regards temporary work and the mere provision of labour. (2) The responsibility of the user enterprise could be engaged in specific matters, rather than in certain circumstances. This responsibility could apply to working time, rest periods, and as regards occupational safety and health.

Qatar. (2) In all circumstances.

Rwanda. (1) Yes. (2) In all circumstances.

Saudi Arabia. (2) According to national legislation.

South Africa. (2) The circumstances under which this may be done are essentially those referred to in Question 14 (2), provided that: (i) there is clarity as to which obligations rest on which party; and (ii) one of the parties to the relationship (i.e. the subcontractor or the user enterprise) is legally responsible for each of the relevant obligations.
BSA: (1) Yes, but subject to the apportionment of responsibility to that party which has reasonable control over the compliance with relevant national law and practice. (2) To be restricted to provisions to protect health and safety.

Spain. (1) Yes, although it would be preferable to establish the joint and several liability indicated in Question 14. (2) As regards wages, social security and occupational health.
UGT: See under Question 15.

Sri Lanka. (2) See under Question 15.

Switzerland. If contract labour is recognized as an employment relationship, the responsibilities toward the workers concerned should be incumbent on their contractual counterpart.
ASM: An apportioned responsibility is a concept of Swiss legislation.

CSC/CNG: (1) Yes.

VSA: (1) The distribution of the obligations of an "employer" towards a "worker" (for example, obligations respecting the payment of wages and the protection of the person) can in our view in some cases be a defining characteristics of an employment relationship in the form of "contract labour". However, the exact appointment in each case would seem to be difficult to regulate in law.

Thailand. (1) There should not be apportioned responsibility. On the principle of joint liability between the subcontractor and the user enterprise, or between the intermediary and the user enterprise, the contract workers concerned are entitled to have recourse for compensation in full from the employer, as stipulated by the national laws and regulations and practice. (2) In every circumstance.

Turkey. TISK: Yes.

TÜRK-IS (1) Yes. (2) It should be limited to circumstances where both the user enterprise and the subcontractor are established, solvent and legitimate.

CPTUT: (1) Yes.

United Arab Emirates. (2) Should be determined by the parties concerned.

United Kingdom. CBI: No, see under Question 14.

TUC: Yes. (2) This should be limited to circumstances where both the user enterprise and the subcontractor or intermediary are lawfully established and solvent.

United States. (1) The thrust of this question is not clear. The discussion among Members may help to distinguish it from Question 14.

USCIB: (1) No, given the provision contemplated by Question 12 (3).

Uruguay. Worker sector: See under Question 14.

Yemen. Add "where the contractual parties so agree".

Zimbabwe. (1) No, the responsibility or obligation should be between the employer and employee.

See Office commentary under Question 18.

Qu. 17 *(1) Should the instrument or instruments provide that the responsibility regarding occupational safety and health under national laws and regulations for fulfilling obligations, including the obligation to maintain a safe and healthful workplace, should fall upon the enterprise, whether user or subcontractor:*

(a) in the premises of which the work is carried out? or

(b) which is responsible for the machinery, equipment, tools and/or materials used in performing the work?

(2) Should the instrument or instruments provide that the responsibility under national laws and regulations for compensating workers in case of occupational accidents and diseases (when this is not covered by a social insurance scheme) should fall upon the enterprise, whether user or subcontractor:

(a) in the premises of which the work is carried out? or

(*b*) *which is responsible for the machinery, equipment, tools and/or materials used in performing the work?*

Paragraph (1):

Subparagraph (a):

Total number of replies: 73.

Affirmative: 52. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Brazil, Bulgaria, Burundi, Cambodia, China, Colombia, Comoros, Cyprus, Cuba, Czech Republic, El Salvador, Estonia, Finland, France, Haiti, Italy, Gabon, Ghana, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mexico, Namibia, Netherlands, Nicaragua, Niger, Oman, Panama, Peru, Philippines, Qatar, Romania, Saudi Arabia, South Africa, Spain, Sudan, Suriname, Swaziland, Switzerland, Thailand, United Arab Emirates, Uruguay, Zimbabwe.

Negative: 4. Norway, Jordan, Sri Lanka, United Kingdom.

Other: 17. Australia, Benin, Chad, Costa Rica, Denmark, Egypt, Ethiopia, Greece, Hungary, Indonesia, Japan, Mauritius, Myanmar, Pakistan, Portugal, Slovakia, Yemen.

Subparagraph (b):

Total number of replies: 65.

Affirmative: 47. Argentina, Bahamas, Bahrain, Barbados, Belgium, Brazil, Bulgaria, Cambodia, China, Comoros, Cyprus, Czech Republic, El Salvador, Estonia, Finland, Gabon, Germany, Ghana, Italy, Japan, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Namibia, Netherlands, Nicaragua, Niger, Oman, Panama, Peru, Philippines, Portugal, Romania, Saudi Arabia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Switzerland, Thailand, Turkey, United Arab Emirates, Uruguay.

Negative: 2. Norway, United Kingdom.

Other: 16. Australia, Benin, Chad, Costa Rica, Denmark, Egypt, Ethiopia, Hungary, Indonesia, Mauritius, Mexico, Myanmar, Pakistan, Slovakia, Yemen, Zimbabwe.

Paragraph (2):

Subparagraph (a):

Total number of replies: 67.

Affirmative: 46. Argentina, Bahamas, Bahrain, Barbados, Benin, Bulgaria, Brazil, Burundi, Cambodia, China, Colombia, Cyprus, Czech Republic, El Salvador, Estonia, Ethiopia, Gabon, Ghana, Haiti, Italy, Kenya, Kuwait, Lithuania, Malaysia, Malta, Namibia, Netherlands, Nicaragua, Niger, Oman, Panama, Peru, Philippines, Portugal, Qatar, Romania, Saudi Arabia, Spain, Sudan, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, Uruguay, Zimbabwe.

Negative: 6. Finland, Germany, Jordan, Norway, Sri Lanka, United Kingdom.

Other: 15. Australia, Austria, Chad, Comoros, Costa Rica, Denmark, Egypt, France, Indonesia, Japan, Mexico, Myanmar, Slovakia, South Africa, Yemen.

Subparagraph (b):

Total number of replies: 62.

Affirmative: 42. Argentina, Bahamas, Bahrain, Barbados, Benin, Brazil, Bulgaria, Cambodia, China, Cyprus, Czech Republic, El Salvador, Estonia, Gabon, Ghana, Italy, Jordan, Kenya, Kuwait, Lithuania, Malaysia, Malta, Mauritius, Namibia, Netherlands, Nicaragua, Niger, Oman, Panama, Peru, Philippines, Portugal, Romania, Saudi Arabia, Spain, Sri Lanka, Sudan, Suriname, Thailand, Turkey, United Arab Emirates, Uruguay.

Negative: 3. Germany, Norway, United Kingdom.

Other: 17. Australia, Austria, Belgium, Chad, Comoros, Costa Rica, Denmark, Egypt, France, Indonesia, Japan, Mexico, Myanmar, Pakistan, Slovakia, South Africa, Yemen.

Australia. This instrument should only express concerns in terms of an obligation to observe occupational health and safety regulations, with the determination of responsibility in the above circumstances being left to the discretion of individual Members. The issue of liability in the area of occupational health and safety regulation attaches to issues of causation and cannot be clearly defined by an instrument.

Austria. (2) In the event of occupational accident, (a); in the event of occupational deseases, (b).
AK: (1) Yes, with the establishment of shared responsibility as described in Question 16. (2) Provision should be made for joint liability.

Belgium. (2) (b) As a general rule, the employer should be made liable for his or her normal obligations toward the workers that he or she employs. Exceptions could be foreseen in respect of workers that have been supplied to a user enterprise outside the legal framework. With regard to proper subcontracting, this rule would be envisagable only where subcontracting is fraudulous. This does not, however, exclude the possibility of providing, within the general framework of the warranty in case of occupational accidents and diseases, for a subsidiary warranty in favour of workers whose employers have not met their obligations.

Benin. The user enterprise and the subcontractor, when minimum safety and heath conditions are not respected; The subcontractor, when the machinery, equipment, etc., do not correspond to security rules.

Brazil. CNA (1) (a) (2) (a) Yes.
CNC: (1) (2) No.

Canada. Responsibility for health and safety should correspond to the control of conditions that pertain to health and safety. Thus, the entity supplying tools and materials should be responsible for the aspects of health and safety associated with these items, while the entity supplying the premises should be responsible for the aspects of health and safety associated with the location of work. If there is an interaction between tools/materials and the premises (e.g. tools/material that require certain electrical outlets or ventilation systems) there should be liability on the part of both supplying entities to ensure a safe work environment. Responsibility for compensation in the case of injury/illness should fall on the entity that would normally be responsible under existing laws and practice. For example, it may be the case that: (i) if an individual is recognized as being an "employee" of an intermediary, subcontractor or user enterprise, and the "employer" is legally responsible for injury/illness compensation, then the corresponding entity should be responsible; (ii) if there is no legal "employer", but only an owner/occupier of premises where an injury/illness occurs, and occupier's liability exists, then such liability should pertain in the case where a contract worker has been injured. The worker should be compensated in this way because he or she is not recognized as having an employment relationship with the owner/occupier (or any other entity that would be responsible as an "employer").

Chad. (1) (a) These obligations and responsibilities are to be fulfilled by the user enterprise. (b) The subcontractor who is an owner of these machines or equipment. (2) (a) The workers are engaged and paid by the subcontractor who therefore should be responsible in case of occupational accidents and diseases. (b) In general, the subcontractor should be responsible; however, in case of its insolvency its place should be taken by the user enterprise.

Comoros. (2) The instrument should provide that contract workers should be ensured through the social security system.

Costa Rica. (1) Under the traditional principles of occupational safety and health, the obligation assumed by the enterprise, whether user or subcontractor, should cover both the place where the work is carried out and the equipment, machinery and materials used. At all events, there could be an exemption of responsibility, in whole or in part, when an occupational accident or disease occurs due to the demonstrated negligence, lack of care or skill of the worker concerned. (2) See under Question 16. If there is no compulsory insurance scheme, the enterprise — whether user or subcontractor — must assume such responsibility, after corroboration of the circumstances.

UCCAEP: (2) See under Question 16.

Czech Republic. SPD-ČR, KPZS-ČR: No.

Denmark. (1) The user enterprise should be responsible. (2) In Denmark all employers have a statutory duty to take out an industrial injuries insurance.

Egypt. See under Question 15.

Ethiopia. (1) Upon the user enterprise.

Finland. (1) Yes, in principle. Under Finnish legislation, the user enterprise is responsible, in the case of labour-only contracting, for instance, for the occupational safety of those working on its premises. In addition, the formal employer is also responsible for occupational safety. If subcontracting takes place on the premises of the user enterprise, the subcontractor is mainly responsible for the safety of its own workers. The user enterprise also has some obligations concerning occupational safety. An independent subcontractor working on the premises of the user enterprise is mainly responsible for his/her own safety, but the user enterprise also bears some responsibility.

TT, LTK: (2) (a) No.

FFE: The division of responsibility between the employer and the person/body commissioning the work in, for instance, labour protection issues involving labour-only contracting is one of the few cases in which it is acceptable to afford equal treatment to contract workers and formal employees of the user enterprise. Issues concerning the division of responsibility should also allow for some degree of national flexibility.

SAK, STTK, AKAVA: Yes.

France. (1) Article L. 200-3 of the French Labour Code stipulates that "where a contract concluded for the purpose of subcontracting a job related principally to the manpower required for the job done and the subcontractor is not the head of an establishment entered in the commercial register of trades and is not the owner of a business, the principal contractor (user enterprise) shall be required to comply with all the requirements of this Code when the subcontractor's employees are employed in his workshops or shops or on his worksites, as if they were his own wage earners or salaried employees, and shall be liable to the same penalties". (2) This responsibility is incumbent on the employer, i.e. on the subcontractor. When the work is performed in establishments of the user enterprise, French legislation provides — for the assessment of, in particular, a possible case of inexcusable misconduct — that the user enterprise is regarded as a substitute in the supervision of the workers of the temporary work enterprise. The latter remains responsible for the obligations incumbent on him or her, without prejudice to the right to claim reimbursement which he or her can exercise against the person who is guilty of the inexcusable misconduct.

Germany. (2) No, according to national law, the employer's civil liability is replaced by accident insurance. The employer is only liable to provide compensation for personal injury to the insured person employed in his company, their dependents and survivors (even if they have no pension entitlement) if the employer intentionally provoked the incident giving rise to an insurance claim or if the incident occurred on the public highway.
DGB: The responsibility of employers for meeting their obligations with regard to occupational safety and health should be clearly defined.

Greece. (1) (a) It would not be appropriate to indicate the persons responsible for measures to be taken as far as safety and health of contract workers are concerned. Instead, it can be simply mentioned that national legislation should define the persons financially responsible under the national social security system in case of occupational accident and disease.

Indonesia. (1) It depends on the agreement between subcontractor/intermediary and user enterprise, in which provisions on occupational safety and health should be included to protect contract workers. (2) There should be a provision specifying that all contract workers are covered by the social security scheme their premium payments being determined by agreement between the subcontractor/intermediary and the user enterprise.

Iraq. GFTU: Yes.

Japan. It is not appropriate to make the enterprise owing the premises where the work is carried out or the enterprise which is responsible for the machinery bear uniformly the responsibility for occupational safety and health. If any specific statement is made regarding this problem is the instrument, it should state that, based on the actual circumstances of Members, appropriate measures are be taken where possible.
NIKKEIREN: See under Question 14.
JTUC-RENGO: Yes. However, in addition, the employer has an obligation to have health checks carried out.
ZENROREN: Yes.

Jordan. FJCC: (1) Yes. (2) (b) Yes.
ACI: (1) Yes. (2) (a) The responsibility should fall on the subcontractor. (2) (b) On the enterprise responsible for the machinery.
GFJTU: (1) (2) Yes.

Israel. Histadrut: (1) (2) Yes.

Mauritius. (1) Owners of premises where work is performed should be legally bound to keep then in a safe and healthy condition, as appropriate to the circumstances. With regard to the supply of machinery, equipment, tools and materials used in performing the work, a legal duty should be placed, so far as is reasonably practicable, on the person who supplies any such item to ensure that it is safe when used in a reasonable manner and to provide adequate health and safety information.

Mexico. (1) Yes, in either of the two enterprises, depending where the work is carried out, but this responsibility should be clearly specified in the contract for work or services. The fact that it is an established enterprise places the enterprise under the obligation to comply with health and safety provisions of national legislation. In the case of (b) the responsibility falls on the user enterprise if it provides the tools and materials, without, however, ruling out the possibility of the subcontractor being responsible if the work is carried out using its own resources. (2) In Mexico all employment relationships must be covered by the social insurance scheme. Either of the two enterprises will be responsible, depending on where the work is carried out, for occupational accidents and diseases resulting from non-compliance with occupational safety or health measures. (b) Responsibility falls on the user enterprise when it provides the tools and materials, but on the subcontractor if it uses its own resources for the purpose.

Myanmar. (1) Upon the enterprise. (2) Upon the user.

Netherlands. (1) (2) Yes for (a) in any case and for (b) where relevant.
VNO-NCW: (1) (a) (2) (a) Yes. (1) (b) (2) (b) It depends on the circumstances.
FNV, CNV and MHP: (1) (2) The Convention should at least require Members to provide for a clear attribution of responsibilities in respect of safety and health. (a) Yes. (b) As far as relevant, in both cases notwithstanding the full civil liability of the formal employer (ensuing from the employment contract) or any other person (ensuing from tort).

New Zealand. (1) (2) See *General observations* and reply to Question 8.

Norway. No, this should be left to the members States to decide.
LO: Yes.

Pakistan. (1) The user enterprise. (2) The subcontractor — and, if he fails to do so, the user enterprise.

Poland. Solidarnosc: (1) The Convention must oblige governments to fix responsibility for the obligations of the employer with respect to safety and health. (a) and (b) are not the only choices, but both should be taken into account. (2) The Convention should include an obligation on governments to ensure that the workers concerned are compensated in case of occupational accidents or diseases.

Portugal. (1) Responsibilities regarding occupational safety and health should be divided between the user enterprise and the intermediary, when the latter is the employer of the workers. In the same way, the user enterprise would be responsible for the safety of the installations and equipment belonging to the enterprise and used in performing the work. (2) Responsibility concerning occupational accidents and diseases of contract workers could, depending on the country, be based on an insurance scheme or be incorporated within the social security scheme. The responsibility for insurance or registration under the social security scheme should fall either on the user enterprise, as regards independent workers and workers of whom the intermediary is not the employer, or on the intermediary, when the latter is the employer.
CIP: Regulation of this subject should be left to Members to decide.

Rwanda. CESTRAR: (1) (2) Yes.

Slovakia. Yes, on the enterprise on whose premises the work is carried out.

South Africa. (1) Yes. These obligations should fall upon those parties who are effectively able to safeguard the safety and health of contract workers. (2) This requirement is too rigid. The adoption of the approaches in Question, 15 and 16 would be sufficient for obligations of this type.
BSA: Those who are in control of the workers should bear the responsibility to maintain a safe and healthful workplace.

Spain. UGT: See under Question 15.

Switzerland. ASM: Mention should be made of the criterion of integration into the organization of work.
CSC/CNG: Yes. VSA: (1) Yes. (2) This seems to be sensible, although not imperative, provided that it is clearly established (for example, in a contractual arrangement) that compensation is paid by the user enterprise or the subcontractor (in the event that the latter is not the same as the contract worker).

Turkey. Yes, but only when the user enterprise employs its own employees in the same workplace.
TISK: (1) (a) The user enterprise should be responsible for occupational safety and health. (b) The subcontractor should be responsible.
TÜRK-IS: (1) (a) (2) (b) Yes.

United Kingdom. CBI: Every organization has certain responsibilities for the health and safety of persons on the premises. However, with regard to accidents or diseases it is always important to asses whether the causes are related to work within a particular enterprise. This is particularly important in the case of contractors, who may be working for a number of organizations.

TUC: The Convention should oblige governments to establish such obligations. (1) (a) Yes. (b) Yes. The word "supplier" should be construed to mean the person or organization from which the equipment is purchased. (2) The compensation should include an obligation on governments to ensure that contract workers are compensated in case of occupational accidents or diseases. Measures to that effect might reflect the possible allocation of responsibilities cited in paragraph (1).

United States. USCIB: In most cases the enterprise in whose premises the work is carried out will be the same as that responsible for the machinery, equipment, etc., used in performing the work. In any case, the duty of maintaining a safe and healthful workplace should be incumbent on both, and the responsibility for injury should fall on whichever fails in its duty.

AFL-CIO: The Convention should establish the basic principle that workers must receive adequate protection with respect to health and safety, whether or not their direct employer controls the premises or machinery.

Uruguay. Worker sector: (1) (2) Rather than being mutually exclusive (a) and (b) complement each other.

Yemen. (1) (2) Responsibility should fall upon the enterprise which directly uses contract workers.

Zimbabwe. (1) (b) The user enterprise or subcontractor must be responsible for occupational health and safety regarding both premises and machinery. (2) (a) and (b) applies in the absence of a social insurance scheme.

See Office Commentary under Question 18.

Qu. 18 *(1) Should the instrument or instruments provide that, in circumstances specified by national laws and regulations, the subcontractor and the user enterprise, or the intermediary and the user enterprise, should be jointly and severally liable for the social security contributions concerned?*

(2) Should the instrument or instruments provide that, in the absence of joint and several liability, if the party normally responsible for social security contributions does not make them, the other party should be liable for making them?

Paragraph (1):

Total number of replies: 76.

Affirmative: 44. Argentina, Austria, Bahamas, Bahrain, Benin, Bulgaria, Cambodia, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, El Salvador, Ethiopia, France, Gabon, Ghana, Indonesia, Italy, Jordan, Kenya, Lithuania, Mauritius, Mexico, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Panama, Philippines, Romania, Slovakia, Spain, Sri Lanka, Thailand, Turkey, United Arab Emirates, United States, Yemen

Negative: 16. Australia, Barbados, Denmark, Estonia, Haiti, Kuwait, Malaysia, Pakistan, Peru, Portugal, Qatar, Sudan, Suriname, Swaziland, United Kingdom, Uruguay.

Other: 16. Belarus, Belgium, Brazil, Burundi, Canada, Egypt, Finland, Germany, Greece, Hungary, Japan, Myanmar, Saudi Arabia, South Africa, Switzerland, Zimbabwe.

Paragraph (2):

Total number of replies: 56.

Affirmative: 36. Argentina, Austria, Bahamas, Benin, Cambodia, Chad, Colombia, Comoros, Costa Rica, Cuba, Cyprus, El Salvador, Gabon, Ghana, Indonesia, Italy, Jordan, Kenya, Mauritius, Mexico, Namibia, Niger, Oman, Pakistan, Panama, Philippines, Qatar, Romania, Sri Lanka, Swaziland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay.

Negative: 10. Barbados, Belarus, Bulgaria, Lithuania, Malaysia, Myanmar, Peru, Portugal, Sudan, Zimbabwe.

Other: 10. Brazil, Ethiopia, Germany, Malta, Netherlands, Nicaragua, Saudi Arabia, South Africa, Switzerland, Yemen.

Australia. This should be left to the discretion of Members, consistent with national law and practice.

Austria. BAK: Yes.

Bahamas. (2) Yes, but this must be stated in the provisions so that the parties will know their inherited obligations.

Bahrain. (2) No.

Barbados. No. Self-employed persons are responsible for their social security contributions.

Belarus. (1) This should depend on the level of control over the workers concerned. (2) No, because of the full legal and financial independence of the subcontractor and user enterprise.

Belgium. (1) See under Question 15.

Brazil. (1) The instrument should merely provide that national legislation should define who is liable for payment of social security contributions and under what conditions. In principle, the obligation should fall preferably on the subcontracting enterprise or the immediate employer. (2) See under Question 15 (2).
CNA: Yes.
CNC: (1) (2) No.

Burundi. (1) In principle, the subcontractor or intermediary should be primarily responsible, while joint and several responsibility should be applied in the case of insolvency or bankruptcy.

Canada. In both (1) and (2) add the words "to the extent provided for in law and practice". Particular jurisdictions may find the existing wordings too restrictive. Responsibility for social security contributions should follow established law and practice.

Egypt. There should be joint liability for paying social security contributions with respect the following old age, invalidity, occupational injury, medical care, health insurance, maternity benefits and survivors' benefits.

Costa Rica. UCCAEP: There should be joint and several liability in the event of deceitful practice.

Czech Republic. (1) The person who pays the wages to the contract workers should be responsible.
SPD-ČR, KPZS-ČR: (1) No.

El Salvador. (1) No, as no intermediary is included.

Estonia. (2) No.
AETU: Social security contributions might be the obligation of the user enterprise.

Ethiopia. (2) The user and the intermediary.

Finland. (1) This is not the Finnish system.
TT, LTK: (1) No, the responsibility lies with the employer. The self-employed are responsible for themselves in this respect.
FFE: The employer is responsible for the social security contributions arising from his position as the employer, while the expenses arising from social security contributions must be taken into account in the overall pricing negotiations between the parties in the case of other contractual relationships.
SAK, STTK, AKAVA: (1) Yes. Social security systems differ from country to country, so it might suffice for the instruments to contain a provision to this effect; the Recommendation could suggest ways of implementing it in practice. (2) Yes.

France. (1) See under Question 14.

Germany. The are no objections to joint liability, to the extent it does not exceed the framework set in article 28e of Germany's Social Code IV, according to which a valid contract stipulates that the user enterprise, as absolute guarantor, bears the liability for the employer's payment commitments to workers who have been supplied in exchange for payment for work performed. Joint liability of the employer and user occurs if the employer does not have the required permit for his/her activity; in this case the hire contract is null and void, but the employer must nevertheless make full or partial payment of the agreed remuneration. This extended liability is designed to prevent illegal placement operations from being profitable, and to ensure that a user enterprise working with an illegal intermediary is not made liable as an employer for social security contributions. More extensive arrangements should be avoided.
BDA: No. Joint liability of the user enterprise for social security contributions, as proposed here, should be rejected. It would be a mistake from a legal point of view, as well as inappropriate and impracticable, to place such a far-reaching demand upon the user enterprise.
DGB: Joint and several liability for social security contributions makes sense and corresponds in part to German legislation.

Greece. (1) It is not necessary to define in the instrument(s) the party responsible normally for the social security contributions. However, there should be a provision stipulating an obligation to make such contribution by either party (enterprise or intermediary) according to a definition of "employer" in national legislation.
GCGW: (1) The instrument(s) should provide that national legislation should provide for the obligation on the user enterprise and subcontractor to pay social security contributions. (2) Yes.

Haiti. (2) See under Question 15 (1).

Hungary. Employer organizations: (1) No.

Iraq. GFTU: (1) (2) Yes.

Israel. Histadrut: (1) (2) Yes.

Japan. (1) It should be provided that "where possible, Members will adopt appropriate measures".
NIKKEIREN: See under Question 14.
JTUC-RENGO: See under Question 16.
ZENROREN: Yes.

Jordan. FJCC: Yes.
ACI: The main obligation should fall on the subcontractor.
GFJTU: Yes.

Kuwait. (1) This should be mentioned in the contract signed between the worker and the user enterprise or subcontractor but not in the proposed instrument.

Malaysia. (1) No, social security should be solely the responsibility of the subcontractor.

Malta. (2) The liability of a subcontractor for sharing with the employer responsibility for social security payments depends on the degree of involvement of the subcontractor. If the subcontractor is providing human resources (e.g. an employment agency) directly to the employer then the subcontractor and employer should be jointly liable.

Mexico. (1) Yes, enterprises which perform work or services exclusively or principally for another and do not have sufficient resources of their own must be jointly liable. (2) Yes, provided the subcontractor which does not have sufficient resources of its own to carry out the work, and bearing in mind that both parties are responsible for the obligations arising out of national legislation.

Myanmar. (1) The user.

Netherlands. (1) Yes, if the subcontractor is primarily responsible and fails to fulfil his or her obligations, the main contractor can be held responsible. The latter can, however, be indemnified against this. (2) The Netherlands has a system of blocked accounts. A main contractor is (jointly) liable for the payment of tax and social security premiums by the subcontractors (ultimate responsibility) but is protected against this responsibility if he she transfers the sum of money involved to a blocked account. This system will be implemented for the users of temporary workers provided by intermediaries.
VNO-NCW. Yes, in principle, but this can be arranged in various ways and it should be left to Members to decide how.
FNV, CNV, MHP: The Convention should require that Members provide for joint and several liability, on the understanding that this may take the form of primary and subsidiary liability and provided that this provision does not weaken the promotion of normal employment relationships (with all connected responsibilities and duties for the employer) between the worker and the intermediary.

New Zealand. See *General observations.*

Nicaragua. (2) Since the responsibility must always be shared, this is irrelevant.

Norway. No. See under Question 8.

Pakistan. (1) The subcontractor or, on his failure, the user enterprise.

Peru. The social security contributions are the responsibility of the enterprises supplying contract workers, i.e. of the latter's employers.

Poland. Solidarnosc: A Convention should include an obligation on governments to determine the responsibility for making social security contributions. It could recognize both of the types of liability indicated but they are not the only choices.

Portugal. (1) No. Social security contributions should be borne by the employer who pays the remuneration. In order to protect the workers, as noted in the reply to Question 12, the user enterprise could be obliged to require the subcontractor to give proof of social security registration.
UGT: In practice the workers concerned receive a rather different treatment from that of other dependent workers as regards social security. It is therefore essential that the ILO

instruments regulate more thoroughly the rights of such workers in all matters regarding social security.

Qatar. (1) No, the user enterprise should be liable for these contributions.

Rwanda. CESTRAR: A Convention should stipulate that governments should determine the responsibility for social security contributions.

Saudi Arabia. According to national legislation.

South Africa. This is not appropriate. The approaches in Questions 15 and 16 are preferable.
BSA: (1) This is totally impracticable. (2) See under Question 15 (1).

Spain. UGT: See under Questions 14 and 15.

Sudan. (1) This liability should be confined to the intermediary and the user enterprise.

Switzerland. (1) Swiss legislation does not provide for this kind of responsibility. (2) This depends on whether a worker involved in subcontracting is independent or dependent; in the latter case his or her employer assumes this responsibility.
UCAPS: No.
Swissfashion: The subcontractor should be primarily responsible.
CSC/CNG: (1) (2) Yes.
VSA: (1) (2) Yes.

Thailand. (1) Yes. The phrase "or the intermediary and the user enterprise" should be deleted since the "intermediary" is deemed to be employment agent.

Turkey. Yes, only when the user enterprise uses its own employees in the same workplace.
TISK: (1) No. This should be left to national regulation.
TÜRK-IS, CPTUT: Yes.

United Kingdom. CBI: No.
TUC: The Convention should include an obligation on governments to allocate responsibility for making social security contributions; this might, for example, be done in a manner which reflects the allocation of responsibility outlined in Questions 14 and 15.

United States. USCIB: (1) No, in the United States there is a requirement for a social security contribution by the employer and employee. Therefore, if the subcontractor, user or intermediary are not employers, they are not required either jointly or severally to make such contributions. Where an employment relationship exists, e.g. in the case of temporary employment agencies, the agency should be and is responsible for social security contributions. (2) No, the responsibility of a subcontractor or temporary employment agency should not differ from that of any other employer.
AFL-CIO: The Convention should establish that adequate provision be made so that non-standard employment relationships do not result in employees lacking income and security.

Uruguay. Worker sector: (1) Yes.

Yemen. (1) Yes, if the contractual parties so agree. (2) The user enterprise should have the right to deduct the amount due to a subcontractor who fails to make necessary payments.

Zimbabwe. (1) The responsible employer should be liable.

Questions 14-18. The allocation of responsibilities is one of the most delicate and complicated areas to legislate, especially at the international level. This is especially true as far as contract labour is concerned — a contractual arrangement which is actually a "border-line" institution between commercial and labour law. In order to have more information on this subject, the Office included in the questionnaire five specific questions concerning this problem. Although the majority of replies were in the affirmative, the negative or other replies have shown that this issue requires further elaboration.

A number of reservations have been made with regard to the responsibilities for fulfilling financial obligations toward contract workers, mentioned in Questions 14 and 15. It was emphasized that such responsibilities should fall primarily on the enterprise having an immediate and direct relationship with such workers. It has been proposed, instead of establishing such responsibilities as a general rule, to limit their application to situations where the user enterprise becomes insolvent or when fraud or abuses occur. As regards the possibility of apportioning employers' responsibilities between the parties to a subcontracting arrangement (Question 16), it has been suggested that this be made dependent on who controls the conditions under which contract workers actually work and to what extent. In the replies to Question 17 the responsibilities for safety and health of contract workers and for compensating them in case of occupational injuries or diseases have also been linked to the question of who exercises control, and to what extent, over the conditions under which contract workers perform their work. Both the premises on which the work is carried out and the responsibility for the machinery/tools etc. are important factors in determining who exercises such control. It has therefore been suggested that the responsibilities for both the safety and health of contract workers and compensating them in case of occupational injuries as diseases be placed either on the enterprise in whose premises this work is carried out or on the enterprise which supplies material, tools, etc., or on both of them, depending on how far they are associated with the aspects of safety and health. The reaction to Question 18 has to a great extent proved to be similar to that to Questions 14 and 15, referred to above. Moreover, it was regarded unnecessary to define in the instrument(s) the party responsible for social security contributions. Instead, it was proposed that a provision stipulate an obligation to make such contribution by either party to the subcontracting arrangement, i.e. by the subcontractor (or intermediary) or by the user enterprise, or by all of them, in accordance with the definition of "employer" as established by national legislation.

With this in mind, and also in view of the fact that the majority of replies were in favour of both a Convention and a Recommendation, the Office has reorganized the provisions concerning responsibilities. As regards responsibilities for safety and health, compensation for occupational accidents and diseases, and social security contributions, the Office believes that the precise allocation of responsibilities should be left to each Member in taking the measures provided for in *Point 9 (1), (2)* and *(3)*, of the Conclusions proposed with a view to a Convention, which lay down the general principles on these questions. It has, however, included a general principle on assignment of responsibility for fulfilling obligations generally toward contract workers, on the basis of the degree of dependency and control, in *Point 22* of the Conclusions proposed with a view to a Recommendation. As regards financial obligations toward contract workers, the Office has retained the solution proposed in Question 14, with a more flexible formulation (*Point 23 (1)*), while it has inserted a provision specifically addressing insolvency situations (*Point 23 (2)*).

Qu. 19 *Should the instrument or instruments provide that implementation of the laws and regulations applicable to contract workers should be ensured through labour inspection ?*

Total number of replies: 73.

Affirmative: 69. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Estonia, Ethiopia, Finland, Gabon, Ghana, Greece, Haiti, Hungary, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Malta, Mauritius, Mexico, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States, Uruguay, Yemen, Zimbabwe.

Negative: 1. Australia.

Other: 3. France, Germany, Malaysia.

Australia. No. In Australia the function of inspection is limited to employment relationships. It is inappropriate to extend the powers of inspection because of the wide spectrum of relationships included by the term contract labour.

Austria. Yes, to the extent that worker protection and worker supervision are involved.
BAK: The competent administrative authorities may also act in the labour inspectorate's stead.

Brazil. CNA, CNC: Yes.

Costa Rica. UCCAEP: Yes.

Finland. Yes, in so far as the work in question is done within an employment relationship or is otherwise subject to labour protection legislation.
TT, LTK, FFE: New tasks should not be given to the authorities based on the concepts used in the report.
SAK, STTK, AKAVA: Yes, it is particularly important in the areas where abuses have been widespread.

France. Workers engaged in subcontracting are covered by labour legislation and regulations whose enforcement comes within the competence of labour inspectors. The power of labour inspectors to fight effectively against labour trafficking has been reinforced in France, and the Labour Code empowers them to demand from an enterprise a registration or authorization documentation and proof that its business partner is also a properly established business.

Germany. Compliance with occupational safety and health regulations should be supervised by the competent inspectorate.
DGB: Yes.

Greece. GCGW: Yes.

Hungary. Yes, with the reservation that in dealing with specific situations national legislation will be applicable.

Iraq. GFTU: Yes.

Israel. Histadrut: Yes.

Japan. It is too early to make such a provision at this stage, as the situation in each member state is different.

NIKKEIREN: Question 19 and 20. The labour inspection system allows the government administration to intervene directly in a contract relationship between private individuals. In a society where human rights are fairly secure, it is not necessary to extend the labour inspection system to contract workers or to provide for punishment. If subcontractors are involved in criminal cases, the general judicial system can cope with the issue.

JTUC-RENGO, ZENROREN: Yes.

Jordan. FJCC, ACI: Yes.

GFJTU: Yes.

Malaysia. See under Question 6 (3).

Netherlands. Yes, by the labour inspectorate or by other qualified institutions in accordance with national circumstances.

VNO-NCW: No, for the Convention.

FNV, CNV, MHP: Yes, as far as safety and health is concerned. As regards the other provisions it should be left to Members to determine the means of ensuring implementation (see under Question 20).

New Zealand. See *General observations* and under Question 5. The New Zealand Government does not consider that any instrument applying to contractors not covered by employment legislation should be enforced by labour inspection.

Poland. Solidarnosc: Yes, especially in case of migrant labour.

Portugal. Yes. In Portugal the functions of the labour inspectorate include enforcement of labour law standards, irrespective of the employer. This principle could usefully be included in an international instrument as a means of ensuring that States have systems which guarantee the application of the standards which give effect to the obligations contained in international instruments.

Rwanda. CESTRAR: Yes.

South Africa. BSA: Yes.

Spain. UGT: Yes.

Switzerland. CUSEA: Yes, if the term "labour inspection" is more clearly defined.

CSC/CNG: Yes.

VSA: Yes.

Turkey. TISK: It is doubtful whether labour inspection could cover all types of contract labour.

TÜRK-IS, CPTUT: Yes.

United Kingdom. Yes, this appears to be fully in line with the existing approach to health and safety regulation in Great Britain.

CBI: No.

TUC: Yes, for a Convention. The Recommendation might suggest that the enforcement of provisions relating to contract labour should be among the priorities of governments when allocating funds for labour inspection.

United States. USCIB: No, there should be no inspection beyond that already in effect to enforce standards regarding minimum wage, child labour, health and safety, etc.

Uruguay. Worker sector: Yes.

The vast majority of replies to this question are in the affirmative. However, some reservations have been made with regard to the fact that the function of labour inspectorate is frequently limited to employment relationships and that, in view of the variety of contractual relationships involving contract labour, the extension of such powers might not be feasible. The Office has therefore found it appropriate to redraft slightly the text of this question by inserting in it the phrase "by the competent public authority" and has included it in the Conclusions proposed with a view to a Convention *(Point 12).*

Qu. 20 *Should the instrument or instruments provide that adequate remedies, including penalties, for violation of the laws and regulations should be provided for and effectively applied?*

Total number of replies: 74.

Affirmative: 67. Argentina, Austria, Bahamas, Bahrain, Barbados, Belarus, Belgium, Benin, Brazil, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Egypt, El Salvador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Haiti, Hungary, Italy, Jordan, Kenya, Kuwait, Lithuania, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Romania, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, United Kingdom, Uruguay, Yemen, Zimbabwe.

Negative: 1. Indonesia.

Other: 6. Australia, Estonia, Greece, Malaysia, Switzerland, United States.

Australia. The instrument should only state that adequate remedies should be provided for and effectively applied, consistent with national law and practice.

Austria. BAK: Yes.

Brazil. Yes, in accordance with national law and practice.
CNA, CNC: Yes.

Costa Rica. UCCAEP: No. There is no need to establish additional sanctions.

Estonia. It is problematic. National legislation should provide for it.
AETU: Yes.

Finland. Yes, depending on the content and structure of the Convention.
TT, LTK, FFE: No, the existing monitoring systems are perfectly adequate.
SAK, STTK, AKAVA: Yes, the Convention itself should provide adequate remedies.

France. Yes, French legislation provides for civil sanctions for illegal labour subcontracting which causes prejudice to the employee or foster unfair competition, together with the re-qualification of the contract concerned, annulment of the commercial contract and joint responsibility of the parties to that contract. In addition, the new Criminal Code has introduced the principle of a criminal responsibility of legal persons and has increased the sanctions for illegal labour subcontracting.

Ghana. TUC: Yes.

Greece. The sanctions should be of an administrative or economic nature (e.g. withdrawal of a permit to subcontract for labour).
GCGW: Yes.

Hungary. See under Question 19.

Iraq. GFTU: Yes.

Israel. Histadrut. Yes.

Germany. DGB: Adequate remedies and fines representing a deterrent are crucial to prevent violations.

Japan. JTUC-RENGO: Yes.
ZENROREN: Assimilation of contract workers with regular employees of the user enterprise might be an adequate remedy.

Jordan. FJCC: Yes.
ACI: This is the responsibility of the subcontractor and the labour inspector.
GFJTU: Yes.

Malaysia. See under Question 6 (3).

Netherlands. Yes, assuming that in the case of a Convention enforcement by either public law or civil law can be chosen. The Netherlands is in favour of the wording of the Convention on home work: "adequate remedies, including penalties where appropriate".
VNO-NCW: See under Question 19.
FNV, CNV, MHP: Yes.

New Zealand. See *General observations* and under Questions 5 and 19.

Panama. Yes, but in accordance with national legislation.

Poland. Solidarnosc: Yes. This should be envisaged in a Convention.

Portugal. Yes. This provision can play a positive preventive role.

Rwanda. CESTRAR: Yes.

South Africa. A Recommendation should include criteria for determining whether penalties and remedies are adequate. They should include: (a) the accessibility of remedies to contract workers; (b) the efficacy of the procedures and the level of resources devoted to those authorities responsible for administering the procedures and penalties (this would include both the labour inspectorate and, in countries where there is reliance on criminal sanctions, the prosecuting authority); (c) the level of penalties and their effectiveness as a means of encouraging compliance with relevant standards.
BSA: Yes. It should not, however, include penalties because this will criminalize labour law, which should on the contrary be decriminalized.

Spain. Yes, including the possibility that the authorization to exercise of activity of a subcontractor might be revoked in the event of a serious violation.
UGT: Yes.

Switzerland. In a Convention only.
CUSEA: Yes, in accordance with national legislation.
CSC/CNG: Yes.
VSA: Yes.

Turkey. TISK: No, in the case of a Convention.
TÜRK-IS, CPTUT: Yes.

United Kingdom. See under Question 19.
CBI: Yes, but only if it is decided that there is to be a Convention; and, in that event, presumably remedies would be a matter for national law.
TUC: Yes.

United States. USCIB: No, see under Question 19.
AFL-CIO: Governments should enforce protective standards. However, the AFL-CIO's experience has been that where a substantive right is not supported by adequate enforcement machinery it is meaningless. In addition, where the government is the sole avenue of redress, enforcement is subject to the vagaries of the budget process and political priorities. Thus, it is

of great importance that any rights created or suggested be accompanied by appropriate remedies.

Uruguay. Worker sector: Yes.

Although the vast majority of replies to this question were in the affirmative, some felt the provision should refer to remedies only or use similar wording to that of Article 9 of the Home Work Convention, 1996. The Office has drafted this provision accordingly and included it in the Conclusions proposed with a view to a Convention *(Point 13).*

VII. Special problems

Qu. 21 *(1) Should the instrument or instruments provide that Members should take measures to provide appropriate protection to contract workers who are to perform work in a country other than their own?*

(2) If so, which measures?

Paragraph (1):

Total number of replies: 74.

Affirmative: 53. Austria, Bahamas, Bahrain, Barbados, Benin, Brazil, Bulgaria, Burundi, Cambodia, Canada, Chad, China, Colombia, Comoros, Costa Rica, Cuba, Czech Republic, Cyprus, Denmark, Egypt, El Salvador, Gabon, Ghana, Greece, Haiti, Indonesia, Italy, Jordan, Kenya, Kuwait, Lithuania, Mauritius, Myanmar, Namibia, Netherlands, Nicaragua, Niger, Oman, Pakistan, Panama, Peru, Philippines, Portugal, Qatar, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, Turkey, United Arab Emirates, Uruguay.

Negative: 9. Argentina, Australia, Finland, Malaysia, Mexico, Norway, Romania, United Kingdom, Yemen.

Other: 12. Belarus, Belgium, Estonia, Ethiopia, France, Germany, Slovakia, South Africa, Sudan, Switzerland, United States, Zimbabwe.

Paragraph (2):

Total number of replies: 43.

Australia. No. As this question is worded ambiguously, it has been taken to mean that "Members should take measures to provide appropriate protection to contract workers who are to perform work in a country other than [the worker's] own". This being the case, any measures recommended by the instrument should cover all workers within a Members' territory, regardless of their country of origin. Furthermore, if "equality of treatment" provisions are in the instrument, all workers should be protected regardless of their country of origin. In addition, there are separate conventions covering migrant workers, which could be referred to in the Preamble.

Austria. (2) Yes, such as legal assistance and official cooperation agreements which permit supervision of foreign contractors. Contract workers assimilable to the status of "employee" should be guaranteed pay and work conditions no less favourable than those applicable to the majority of national workers — performing comparable work with comparable qualifications — employed in the user enterprise. For the duration of their employment in another country, foreign contract workers could also be granted the same protection as contract workers of that country. If the term "measures" is intended to mean those taken between the States concerned, social insurance should not be included.

BAK: (1) Yes. (2) The application of national protection measures, inasmuch as they are compatible with the relevant provisions of international civil and administrative law; the introduction of cross-border co-determination machinery (cf. the so-called European Works Council).

Bahamas. (2) All measures should apply.

Bahrain. (2) Measures: (i) ensuring equality between contract workers and other workers employed by the user enterprise; (ii) to meet financial obligations; iii) ensuring the fulfilment by the user enterprise of responsibilities regarding occupational safety and health and occupational diseases.

Barbados. (2) Negotiate working conditions, wages and compensatory benefits.

Belarus. (1) The instrument should provide for the responsibility of the intermediaries and user enterprises for the social and legal protection of migrant workers. Members should control quantitative and qualitative aspects of migration of labour force by issuing special licences.

Belgium. (1) Apart from the information to be given to the worker by the employer before his or her departure abroad (see in particular the EU Directive of 14 October 1991), contract labour regulation comes within the competence of the country where the work is performed, not that of the home country of the worker or the employer.

Benin. (2) Protection similar to that rendered to nationals.

Brazil. (1) Yes. The measures should provide for work contracts which clearly stipulate the rights of the workers recruited for activities in a foreign country; care in the event of illness or accidents; conditions governing the termination of the contract before the anticipated date and the repatriation of workers.

CNA, CNC: (1) No.

Bulgaria. (1) In case of termination of contracts.

Burundi. (2) Among other things, to maintain bilateral relations; and to establish close cooperation between the respective social security systems.

Cambodia. (2) In this case contract workers should at least be covered by the laws and regulations of their country of origin. They should also benefit from such fundamental rights as union rights, minimum wage and social protection.

Canada. (1) Yes. However, too broad an interpretation of "appropriate protection" would place too large a burden on the country of citizenship. Generally, the laws of the country where work is being done should apply.

CEC: This question presents special problems about the application of standards and domestic legislation in another jurisdiction which could be addressed by an international instrument. It is a complex issue which requires input from specialists in international law.

Chad. (2) For example, the contract between the subcontractor and the user enterprise should spell out the conditions of work of contract workers, and the subcontractor attache to the contracts of employment or collective agreements concluded with such workers a copy of the contract signed with the user enterprise.

China. (2) Arbitration and international practice.

Colombia. (2) Conventional measures, within a single framework.

Comoros. (2) Safe and healthy conditions; verification as to whether the materials used are dangerous.

Costa Rica. (1) Yes. Liability is not diminished because of the distance between the workers and the premises of the enterprise. (2) The subcontractor should provide necessary protection when the work is carried out abroad, unless expressly stipulated otherwise in the contract and, in particular, when the work is carried out exclusively abroad, and customs or practices exist which provide better protection for these workers.
UCCAEP: No.

Cuba. (2) As determined by each country.

Cyprus. (2) Measures to ensure, for example, that accurate and reliable information is provided to contract workers regarding their terms and conditions of employment and, in cases of violation, measures to ensure that penalties are imposed on the intermediaries responsible.

Czech Republic. (1) Yes, so that their status in labour law corresponds to that of nationals.

Denmark. (2) Contract workers should have the same rights as employees in the traditional sense in their home country if the posting has a duration of up to one year. Afterwards, they shall enjoy the same rights as employees in the traditional sense in the country in which they are working.

Egypt. (1) Through the application of Conventions concerning migrant workers and through national laws and regulations.

El Salvador. (2) It would be necessary to amend the wording of Question 5 (3) to fit in with our labour legislation. See under Question 5 (1).

Estonia. (1) Problematical, because difficult to regulate.

Ethiopia. (1) Protection should be rendered by the country concerned.

Finland. TT, LTK, FFE: (1) No.
SAK, STTK, AKAVA: (1) The Convention should contain provisions on migrant workers and their equal treatment.

France. (1) European and national labour standards on posted workers apply.

Gabon. (2) Measures against the illegal migration of workers.

Germany. Such a generally worded obligation should not be incorporated into the document. Even the EU directive on posted workers, upon which agreement has now been achieved in the EU Labour Council of Ministers, makes provision for a whole range of different legal obligations for member States (in particular, the limitation of collectively agreed working conditions to the building sector). It is not clear to what extent an ILO document would be able to guarantee the required distinctions. Regarding social security, there would be no objections to insurance protection abroad inasmuch as it does not exceed the framework set in article 4 of the Germany's Social Code IV. In principle, social insurance legislation only applies to persons employed (or self-employed) in Germany. However, in the context of cooperation abroad, persons entertaining an employment relationship established on German territory and who are detached abroad for a limited period are still subject to insurance requirements. The provisions applicable to cooperation abroad take effect whenever there is employment outside German national territory, as part of an employment relationship already existing within the Federal Republic and whenever that employment is limited in time either on account of the activity's special nature or of a contractual agreement to that effect.
DGB: Yes. Particularly when workers are sent across borders, specific regulations are necessary.

Ghana. (2) Measures such as protection of remuneration, working time and other conditions of work, occupational safety and health, social security coverage and compensation in case of occupational accident or disease and repatriation of earnings, if necessary.

Greece. (2) Members should guarantee contract workers working abroad the conditions of employment that are applicable to contract workers of the host country. The workers concerned should be informed in writing — in the language of their country of origin and of the host country — about conditions of work before they depart. The employer should guarantee coverage of the cost of contract workers returning home. Administrative and legal assistance and protection should also be guaranteed to such workers.

GCGW : (1) Yes. (2) (a) For the host countries : measures regarding equal treatment ; (b) for the countries of origin : measures aimed at protecting workers' financial claims, social security contributions, and claims resulting from occupational diseases or accidents in accordance with Questions 12-18 ; measures concerning working time in the host country and social insurance ; measures to encourage the establishment of institutions guaranteeing contract workers' claims resulting from the insolvency of the user enterprises, subcontractors or intermediaries.

Haiti. (2) Protection against different types of chemical products and unacceptable wages ; medical services to be provided by the subcontractor, and information about all possible risks and dangers.

Indonesia. (2) Particularly with regard to drawing up working contract.

Iraq. (1) Yes. (2) They should be treated on equal footing with national workers.

Japan. NIKKEIREN : See under Question 14.

JTUC-RENGO : Yes.

ZENROREN : (1) Yes. (2) Measures which complement the limited protection of contract workers abroad and ensure their right to a State pension.

Jordan. FJCC : (1) Yes. (2) Special legislation should be enacted.

ACI : (1) Yes, they should be responsible for the repatriation of the workers concerned. The expenses incurred should fall on the original subcontractor.

GFJTU : (1) No. (2) Should be determined by the national legislation.

Kenya. (2) A foreign contract of service should be entered into before any worker proceeds to work outside the country.

Kuwait. (2) Medical insurance for all workers.

Malaysia. (1) No, the receiving country should be responsible for the protection of foreign contract workers.

Mauritius. It is not possible for a Member whose workers are employed in another country to ensure that its workers are being well treated, especially since these countries may not have ratified certain basic conventions. Bilateral agreements between the two countries could be a solution whereby the country sending its workers could secure certain written reciprocal guarantees from the other country.

Namibia. (2) By introducing the necessary legislation aimed at protecting foreign nationals.

Netherlands. (2) There must be no discrimination on grounds of origin.

VNO-NCW : No.

FNV, CNV, MHP : (1) Yes. (2) Members should at least be required to provide for equal treatment.

New Zealand. (1) See *General observations.* Parties who choose to enter into contracts abroad, whether of service or for services, should be able to do so free of restrictions imposed by their own country, and should be governed by the national practice of the country concerned.

NZCTU : (1) In principle, instrument(s) should provide protection for contract workers who are to perform work in a foreign country, but the NZCTU accepts that there would be practical difficulties in framing them.

Nicaragua. (2) The worker should not be responsible for the cost of transport to the host country and back to the place of origin or for the cost of migration documents and requirements (visa, passport, safe-conduct, etc.). The worker should be guaranteed decent treatment when offering his or her services, as well as the same labour and social rights as workers in the host country. The worker should be guaranteed equal treatment in respect of access to employment, in order to avoid any discrimination. Subcontracting arrangements for the performance of services or work in another country should be prohibited except with the prior permission of the authorities specified in national legislation. In order to permit subcontracting arrangements, the relevant authorities should insist that (i) the labour contract specify the type of work to be carried out, the duration of the work-day, the duration of the arrangement, the wage or salary to be paid, the food and medical services to be provided, the type of housing and transport, the arrangements for the worker's return to his or her country, and any other detail laid down in national legislation; (ii) a bank guarantee be posted to meet any claim that may be submitted; (iii) the recruiting agent empower an agent in the country of origin with whom the relevant authorities can discuss any claim by the worker and his or her family regarding the execution of the contract.

Niger. (2) Safety and health; social security coverage; protection of wages.

Oman. (2) Same protection as is afforded to nationals of the host country.

Pakistan. (2) The relevant clauses should be inserted in agreements for the supply of labour.

Panama. (2) Situations should be avoided which restrict the right to recourse to the authorities of the country, or in which labour contracts exclude the application of the internal legislation of the country where such workers have their employment relationship.

Philippines. (2) (i) On site: welfare protection, legal assistance, responsible intermediary, adjudication of claims. Moreover, a bilateral agreement should be entered into with the host countries regarding the provision of social security protection, safe and humane working conditions, etc., for contract workers working in foreign countries.

Poland. Solidarnosc: (1) Yes. (2) A Convention must specifically refer to migrant workers and require the governments of the host country to provide at least equal treatment of migrant workers as it does for other contract workers.

Portugal. (2) In particular, a guarantee that the contract workers employed abroad shall be paid medical care expenses and repatriation when necessary.
CIP: (1) Views similar to that of the Government.

Qatar. (2) Measures should be taken by agreement between the two countries.

Rwanda. CESTRAR: (1) Yes. (2) A Convention should make special reference to migrant workers and oblige the governments of the host countries to treat such workers at least equally with other contract workers.

Slovakia. (1) Yes, as contract labour may be executed by foreigners if they have a work permit issued by the competent authorities of the host country.

South Africa. This is a difficult issue to regulate as the controls that could be envisaged involve issues other than labour law, such as treaties and international agreements. Consideration should be given to a requirement on the recipient country that contract workers from other countries do not receive unfavourable treatment in the area mentioned in Question 8 (b) and in some other areas.
BSA: (1) Yes, but restricted to certain specified measures. (2) Health and safety of the contract workers. However, the best way to deal with this question is to leave it for bilateral agreements between the countries.

Spain. (2) Adequate medical care, decent housing provided by the enterprise, payment of wages, paid leave in the country of origin, when the work to be carried out exceeds a specific period.
UGT: (2) Registration and, where applicable, licensing of and posting a bond by the subcontractors in a foreign country.

Sri Lanka. (2) Protective measures envisaged by the ILO instruments concerning migrant workers.

Sudan. (1) Yes, on the understanding that the prevailing laws in the host country apply to them as far as protection is concerned.

Suriname. (2) The legislation of the country where the contract is signed between worker and employer must be applicable to the contract.

Swaziland. (2) These measures should be contained in the contract between the two parties. This contract should be attested by Government of the country of origin.

Switzerland. It seems important to provide that host countries should respect minimum standards (mentioned in Question 8) is respect of work involving cross-border subcontracting. As regards cross-border supply of labour ("labour subcontracting"), it might be prohibited.
UCAPS: This provision is not realistic. The matter should be left to national legislation.
CSC/CNG: (1) Yes. (2) Measures against underpayment (minimum wage, extension of collective agreements).
VSA: (1) Yes.

Thailand. (2) Written contracts should stipulate that employment conditions are not less than minimum standards in the workers' own country. The employer is responsible for fulfilling the relevant obligations and for repatriation in the case of non-compliance with the contract.

Turkey. (2) Migrant workers should be protected against misleading propaganda and discrimination on grounds of nationality, colour, religion and language.
TISK: (1) Yes, "reciprocity" should be the basic guideline. (2) Measures regarding occupational health and safety.
TÜRK-IS, CPTUT: (1) Yes.

United Arab Emirates. (2) Provision should be made in national laws and regulations, as well as in agreements concluded between the subcontractor and the user enterprise.

United Kingdom. CBI: No.
TUC: (1) Yes. (2) The Convention should oblige the government of the host country to provide for equal treatment of migrant contract workers with other contract workers. However, when local working conditions are lower than those a posted worker enjoys in his or her home country, the working conditions of the home country should apply. All efforts should be made to inform posted and migrant contract workers of health and safety regulations in a language they can understand. The user enterprises should be responsible for the implementation by subcontractors/intermediaries of regulations and collective agreements.

United States. (1) Generally, the Fair Labour Standards Act does not apply to work performed outside the country and certain designated territories or possessions of the United States.
USCIB: (1) No, member States should be responsible for determining whether it is necessary to take measures to assure the welfare of their nationals who work in another country.
AFL-CIO: Labour protection standards should apply equally to migrant contract workers.

Uruguay. (2) In order to ensure worker protection as regards social security and occupational accidents or illnesses.
Worker sector: (1) Yes. (2) The most favourable standard should apply.

Zimbabwe. (1) (2) This should be left for international laws and policies governing expatriate workers.

While the majority supported this provision, some reservations and proposals were made in a number of replies. It was emphasized that the interpretation of the phrase "appropriate protection" might place too heavy a burden on the country of citizenship of the contract worker and that the laws and regulations of the country where work is being done should apply. Reservations were also expressed with regard to the complexity of applying domestic legislation in another jurisdiction, which certainly requires a thorough and careful further examination. In order to provide greater flexibility, the Office has reworded this Point — changing the phrase "appropriate protection" to "measures, as appropriate" and included it in the Conclusions proposed with a view to a Recommendation *(Point 26).*

Qu. 22 *(1) Are there any particularities of national law and practice which, in your view, are liable to create difficulties in the practical application of an international instrument or instruments as conceived in this report?*
(2) If so, how would you suggest that those difficulties be met?

Paragraph (1):

Total number of replies: 62.

Affirmative: 11. Bahamas, Bahrain, Haiti, Myanmar, Norway, Swaziland, Turkey, United Arab Emirates, United Kingdom, Yemen, Zimbabwe.

Negative: 34. Argentina, Australia, Austria, Barbados, Bulgaria, Chad, Colombia, Cuba, Cyprus, Egypt, France, Gabon, Greece, Ghana, Jordan, Kenya, Kuwait, Lithuania, Mauritius, Namibia, Niger, Oman, Pakistan, Panama, Philippines, Portugal, Qatar, Romania, Spain, Sri Lanka, Sudan, Suriname, Thailand, Uruguay.

Other: 17. Belgium, Brazil, Burundi, Canada, Costa Rica, China, Czech Republic, Denmark, Ethiopia, Finland, Germany, Hungary, Indonesia, Japan, Malaysia, Netherlands, United States.

Paragraph (2):

Total number of replies: 16.

Argentina. (1) No, in case of a Recommendation.

Australia. See under Question 1.

Austria. BAK: (1) No.

Bahamas. (1) Yes, the instruments will contain obligations not generally requested of the contract worker or the intermediary. (2) There might be an exception clause to assist small subcontractors attempting to come on stream.

Bahrain. (1) The changeable nature of laws and regulations in some countries generated by the fluctuation of their economic systems may create difficulties in the application of international instruments. (2) Such changes should not take place in a rapid or inconsistent manner; if this is unavoidable, it should be within tight limits.

Belgium. (1) The difficulties are mainly related to the definition of contract labour (see *General observations*). The instruments should attempt to strike a fair balance between the need to protect the legitimate rights of workers and the impossibility of abolishing the equally legitimate right of enterprises to resort to subcontracting. The worker of a subcontractor enjoys same rights as the workers of other employers. Measures to be taken in this regard are justified only where it seems that recourse to subcontracting is only motivated by a desire to restrict workers' rights (whether directly in respect of wages and conditions of work or indirectly in respect of social security rights).

Brazil. Prolonged use of contract labour often serves to circumvent labour obligations, thereby weakening the responsibilities of both user enterprises and subcontractors, and this may be a serious obstacle to the adoption and effectiveness of the instrument. Another complication is the use of contract labour by a natural person who is often not very visible, which makes it extremely difficult and complex to extend protection to such workers.
CNA, CNC: (1) No.

Burundi. (1) The legislation of Burundi does not contain provisions concerning subcontracting. (2) The ILO should assist Members in elaborating necessary legislation.

Canada. The globalization of the economy has made it difficult for employers to remain competitive without cutting costs, which includes using contract labour. This limits the likelihood of adopting measures to limit this practice.

Chad. (1) No, contract labour is still in its embryonic stage.

China. (1) China's labour laws provide that all enterprises must observe statutory regulations when recruiting workers.

Costa Rica. (1) Costa Rica's labour legislation provides protection to almost all workers. The use of "atypical" employment to evade employers' responsibilities and to circumvent labour obligations may be dangerous, especially if an appropriate legal framework is not established. In this respect account must be taken of the fact that the dependency of workers on their employer and their need for job stability may make them accept conditions which conflict with the legal order and which are even contrary to their own interests. (2) It is important to analyse carefully whether it would be appropriate to ratify an international convention or other instrument on the subject. If so, detailed provision would have to be made in Costa Rica's legislation to ensure that the responsibilities and obligations involved in wage employment are not circumvented through recourse to contract labour. There is a very real possibility that in a number of situations contract labour may cause serious prejudice to the parties, particularly the contract workers, and so appropriate legislation must be established to prevent or at least to redress the situation, and the respective responsibilities must be clearly established.
UCCAEP: No.

Czech Republic. (1) Apart from the need to bring the laws and regulations in line with the international instruments, there would be no social problems.
CMK-OS: Contract labour is a danger to the legal status of workers in industrial relations, and so they are not interested in a substantial extension of this type of employment. The instrument would need to be formulated very precisely, keeping in view the main target — to offer contractual workers, like other workers, sufficient protection in industrial relations.

Denmark. (1) See *General observations*. (2) The problem can be avoided if contract labour is so defined that this set of rules does not apply to normal employment relationships — which would mean that there were two parallel sets of competing rules. Instead, the two sets of rules should complement one another.

Ethiopia. (1) Some regulations based on national legislation might pose difficulties. (2) The government should protect the rights of contract workers in line with ratified conventions and labour laws.

Finland. (1) Finnish labour legislation is based on a clear division: either the employer and employee are involved in an employment relationship or the worker is self-employed. This applies both to subcontracting and to labour-only contracting. There is no intermediate form. Therefore, the instruments proposed are difficult to implement from the Finnish point of view.

The concept of "contract labour" appears to provide a juridical "loophole" enabling employers to evade their normal responsibilities and obligations. Therefore, it bears considering whether the evasion of responsibility might be prohibited under the instrument.

TT, LTK, FEE: (1) Finland's entire national system will become confused if attempts are made to impose regulations based on vague and artificial concepts. The concept of "contract labour" simply cannot offer a reasonable basis for any kind of regulation. Problems can be avoided if any necessary regulation is left to national legislation and national labour market agreements.

SAK, STTK, AKAVA: (1) The Finnish labour legislation applying to various atypical or non-typical work situations is in a transitional stage. In efforts to reform the labour legislation particularly the Employment Contracts Act, the Finnish trade unions demand that special attention be given to situations where there is no formal employment relationship, even if the work is comparable to such a relationship.

Greece. GCGW: (1) No.

Germany. (1) The fundamental right of free choice and exercise of an occupation is enshrined in international instruments ratified by Germany (European Human Rights Convention) and in the German Constitution.

Haiti. (1) By fixing a minimum wage which is absurdly low and adopting legislation basically favourable to employers.

Hungary. (1) There might be difficulty in applying a Convention to a type of contract labour which is common in Hungary, whereby people with a full-time job simultaneously take on some contractual activity. The exclusion of temporary employment agencies from the scope of application of instruments(s) on contract labour, as proposed in Question 5 (4), might generate another difficulty, since the employer status of such agencies is not the same as that of ordinary employers.

Indonesia. (1) Temporary work contracts may create non-professional workers. Permanent workers are preferable.

Japan. (1) The Trade Union Act, which puts workers on an equal footing with their employer in collective bargaining, does not define "employer" but states that, "in general, the employer is a party to a labour contract and is in a position to employ workers". It is understood that, in general, "contract workers" have no right to bargain collectively with the user enterprise, which is not the direct employer. The Act further defines "workers" are "persons who live on their wages, salaries or other remuneration assimilated thereto, regardless of the kind of occupation". "Contract workers" do not come within this definition, and in some cases they are not entitled to the same protection. There is a judicial precedent in Japan in which the right of contract workers to bargain collectively with a proprietor who was not their direct employer was admitted. The precise relationship between the "user enterprise" and the "contract worker" must be taken into account.

NIKKEIREN: Section 44. (Prohibition of labour supply projects) and section 45 (Permission to carry out a labour supply project) of Japan's Employment Security Act are liable to pose difficulties.

ZENROREN: (1) Yes. Conditions of employment tend to deteriorate when work is contracted out in public services. (2) Governments should regulate unstable employment in the public sector.

Jordan. FJCC: (1) Yes. (2) The amendment of local legislation.
ACI: (1) No.
GFJTU: Yes.

Kenya. (1) The Convention and the Recommendation should be as flexible as possible so as to allow each country to adapt its laws and regulations.

Malaysia. (1) National legislation allows the practice of contract labour in order to counter labour shortages, especially in the manufacturing and plantation sectors. (2) Difficulties can be met by adopting a Recommendation and not a Convention.

Mexico. (1) No, provided that the instrument adopted is a Recommendation, since Mexico's legislation does not make express provision for subcontracting, which is covered by the term "intermediary". If the term "individual subcontractor" is adopted, the legislation would have to be adjusted accordingly, since the Civil Code uses the term "performance of professional services".

Netherlands. The instrument would be unacceptable to the Netherlands if it introduced a new category between employee and entrepreneur. See also reply to Question 5 (4).

VNO-NCW: Any instrument that introduces new types of labour contracts would be unacceptable in Dutch labour law.

FNV, CNV, MHP: (1) No.

New Zealand. (1) See *General observations* and under Question 5.

Norway. (1) The suggested instrument covers both work carried out in an employment relationship and work carried out under contract. It also includes work carried out through intermediaries. Norwegian legislation is based on a distinction between an employer-employee relationship and a situation where the worker is self-employed. As to the definition of contract labour, this would create a new intermediate group of workers that does not exist in Norwegian legislation and would be complicated to incorporate. Moreover joint and several responsibility is not recognized in Norwegian legislation.

Poland. Solidarnosc: No.

Portugal. (1). No, if the international instrument does not establish joint and several responsibility of the user enterprise and the employer. (2) By making the user enterprise responsible for monitoring certain general conditions of work, such as the initial social security registration, identification of workers assigned to subcontracting and of insurance against occupational accidents or diseases, where such protection is not provided by social security, with appropriate sanctions in the event of infringements.

CIP: No, provided the instrument is a Recommendation and is sufficiently flexible.

South Africa. BSA: (1) Economic requirements and conditions in member countries may be such that an instrument regulating contract workers would inhibit economic growth and employment. This is why BSA has from the start not been in favour of an instrument. (2) By not imposing rigidities that inhibit economic growth and employment.

Spain. (1) No. However, there are some conceptual problems as regards Spanish legislation with the term "intermediary", since temporary work enterprises — the only enterprises authorized to supply labour in Spain, do not come within the concept.

UGT: (1) The lack of regulations on enterprise groups does sometimes make it difficult to identify fraud and abuse in cases of insolvency and to ensure rights vis-à-vis a subsidiary enterprise — which may appear to be bankrupt but in fact be under the protection of a fully solvent group. Similar problems might also occur when it is the user enterprise (belonging to a holding company who is in fact solvent) who becomes insolvent, thereby endangering the survival of one or more subcontracting enterprises which depend on it economically.

Swaziland. (2) This would be very difficult.

Switzerland. This is only for a Convention.

ASM: Modern jurisprudence tends to extend the definition of "employee" in order to protect contract workers. New regulations on the subject may entail problems of application.

CSC/CNG: No.

Turkey. (1) Yes, the inclusion of subcontractors. (2) They should be left out.

TISK: (1) The development and spread of atypical types of employment, including contract labour, raise a number of issues such as rational work organization, specialization, productivity, competition maintenance, etc. The international instrument(s) should first diagnose the difficulties faced by labour markets correctly and multi-dimensionally, in all their aspects, and should take into consideration alternative solutions found in national practice. (2) By making appropriate adjustments by judicial decisions when and where necessary.

United Arab Emirates. National legislation does not allow intermediaries to employ workers to have work performed under contract labour arrangements: the task of the intermediary is limited to the supply of workers to the user enterprise with which the workers have a direct relationship. (2) A distinction should be made between the intermediary in employment and services provided by a subcontractor.

United Kingdom. (1) Yes, in particular the fact that contract labour in the United Kingdom can include both employees and the self-employed. (2) By restricting any instrument to a Recommendation at the most.

CBI: Yes. The conceptions implicit in the questions posed are completely without regard for the employment framework, both practical and legal, in the United Kingdom. Such an approach, which would seek to define all workers as employees, is as impractical as it is untenable.

TUC: (1) The ratification and application of a Convention could require legislation to deal with bogus self-employment. That would require political will, but it cannot be described as an insurmountable peculiarity of national law and practice.

United States. It should be the objective of all concerned to develop an international instrument that is sufficiently flexible to allow for the different circumstances existing throughout the ILO membership. The difficulties include: adequately defining the terms so as to protect those workers who need protection while preserving the ability of a Member to utilize new forms of work organization fully; and designing and instrument (or instruments) that is (are) budgetarily and practically implementable by Members.

USCIB: (1) Yes. Providing contract workers with similar rights as those afforded to employees, which is essentially what the proposed instrument would do, would require amendment of a whole range of United States laws which are applicable to employees. (2) It is highly unlikely that relevant laws at either the federal level or the state level would be amended to include contract workers as well as employees. It is more likely that some objectives of the proposed instrument could be accomplished by a statutory amendment of the definition of "employee".

Yemen. (i) Subcontractors' non-disclosure of statistics regarding contract labour in order to avoid envisaged obligations. (ii) Inequality of treatment between contract workers and employees of small user enterprises, since the latter are not capable of meeting important financial obligations vis-à-vis the workers. (iii) The impossibility for developing members States to take appropriate measures to protect contract workers, due to economic conditions and declining standards of living.

Zimbabwe. (1) The major difficulty is that contract work generally is for relatively short periods — a day, a week, or a month. For example, pension benefits, medical aid, etc. take so long to process that employees' contract may have expired by the time processing is complete.

A number of replies have referred to the difficulty of providing workable definitions and keeping the instrument(s) within their mandate, i.e. protecting contract workers where necessary without endangering a legitimate subcontracting activity. Several replies also report particularities of the national law or practice of their countries which might create difficulties in the application of the proposed instruments. In certain replies it was indicated that some of these difficulties could be met if the instrument(s) were confined to basic principles and drafted in as flexible a manner as possible. The Office has sought, to the extent possible, to deal with these difficulties in the commentaries to the preceding questions by ensuring a flexible drafting of the corresponding Points in the Proposed Conclusions.

(Federal States only) Do you consider that, in the event of a Convention being adopted, the subject-matter would be appropriate for federal action or wholly or in part for action by the constituent units of the federation? **Qu. 23**

Most governments did not reply to this question or stated that it did not concern them. The replies of the remaining governments are summarized hereafter:

Australia. If a Convention were adopted, in Australia the subject matter would be almost wholly appropriate for State action. This is because contract labour is not a subject over which the Commonwealth is granted legislative power by the Australian Constitution. Although the matter may be dealt with in circumstances where it is incidental to an area over which the Commonwealth is authorised to legislate, it is primarily a matter for the States and for the common law.

Austria. In respect of certain workers (public servants of the individual federal states or "Länder" and of local authorities, as well as agricultural and forestry workers), the authority lies with the constituent units (Länder).

BAK: Reply similar to that of the Government above.

Canada. In Canada, the subject matter would be largely under provincial/territorial and partly under federal jurisdiction.

Malaysia. See under Question 6 (3).

Mexico. Under the Constitution, the constituent states of Mexico enjoy relative autonomy and are obliged to comply with provisions to which the federal State adheres; this includes national legislation and international conventions and agreements.

Sudan: As with all other international labour Conventions, planning and policy formulation come within the competence of the federal authority, while the provincial authorities are responsible for their execution.

Switzerland. In Switzerland, social insurance is regulated at the federal level.

United Arab Emirates. International conventions are within the competence of the federal authorities.

United States. A Convention of sufficient flexibility may be appropriate for federal action, provided it is consistent with national law and practice, including collective bargaining, and provided it recognizes the sovereignty of the individual states. In the United States, states administering their own occupational safety and health programmes do so through plans provided under the Federal Occupational Safety and Health Act and must adopt standards and enforce requirements that are at least as effective as federal requirements. States do not have to have identical standards as long as they are at least as effective. States are also allowed, within some parameters, to have more stringent standards.

USCIB: For some subjects, e.g. workers' compensation, action would be required at the state level. For most others, action would be required at the federal level.

While many of the federal governments that replied to this question stated that the subject-matter of the proposed instruments would be appropriate for action by both the federal authorities and the constituent units of the federation, some other governments indicated as appropriate either the federal level or the level of the constituent units of the federation. The Proposed Conclusions have therefore been drafted so as to be applied in accordance with the constitutional system of each State.

Qu. 24 *(1) Are there, in your view, any other pertinent problems not covered by the present questionnaire which ought to be taken into consideration when the instrument or instruments are being drafted?*

(2) If so, please specify.

Paragraph (1):

Total number of replies: 42.

Affirmative: 11. Australia, Bahrain, Belarus, Cuba, Ethiopia, Haiti, Indonesia, Pakistan, United Kingdom, Yemen, Zimbabwe.

Negative: 28. Argentina, Austria, Burundi, Canada, Colombia, Denmark, Egypt, France, Gabon, Greece, Kenya, Lithuania, Malaysia, Mauritius, Namibia, Netherlands, Niger, Oman, Panama, Philippines, Portugal, Romania, Sri Lanka, Sudan, Suriname, Swaziland, Thailand, Uruguay.

Other: 3. Barbados, Spain, United States.

Paragraph (2):

Total number of replies: 13.

Australia. As Australian contract law is based on common law rights and obligations and it would be necessary for any provisions relating to protection and obligations for contracting parties to be incorporated in domestic legislation, there may be confusion as to which parts of the common law are to be subrogated.

Austria. BAK: No.

Bahrain. To what extent does women's participation as contract workers determine the activities in which they may be involved or prohibited to do so. To what extent should the three parties concerned be responsible for occupational injuries? To what extent should contract workers be covered by the social insurance scheme, and who should be liable for such coverage? Should the registration and licensing referred to in Question 12 be periodical? May the licence be repealed? To what extent does the authority have the power to withdraw a licence or cancel registration. Does the judicial authority have the last say in this regard?

Barbados. Governments, workers' and employers' organizations should work together for social, economic and humanitarian reasons to ensure that: (i) contract workers are employed in satisfactory conditions no less favourable than standard workers; (ii) contract labour practices do not undermine the collective bargaining process.

Belarus. It would be appropriate to discuss at the Conference the issues of mutual recognition of the certificates confirming qualification grades, years of service, which is particularly important for individual subcontractors.

Brazil. NCA: Yes.

Costa Rica. (1) Yes; and probably many others would arise in practice. (2) It is important to establish, as is the case with fixed-term contracts or contracts for specific works, and even in the case of contracts for professional services, that at a given time and in specific circumstances a contract-labour relationship can be converted into a "normal" contract of employment. Furthermore, since it is undeniably true that this kind of recruitment is part of the recent trend towards flexibilization of labour law, it would be appropriate to provide it with a better theoretical framework to ensure the most efficient use of such labour.
UCCAEP: No.

Cuba. This type of employment should only be used under very exceptional conditions which justify its use, and not as a general practice.

Ethiopia. While some countries are experienced in contract labour, others are not.

Finland. TT, LTK, FFE: All problems have been covered and additional regulations would be harmful rather than helpful.

SAK, STTK, AKAVA: The Recommendation should contain provisions regarding contract workers' rights to trade union organization and collective bargaining. The questionnaire does not pay any attention to the problems caused for workers in normal employment relationships by the use of contract labour and to possible ways of solving them. The instruments should provide for collective agreements to limit the use of contract labour.

Ghana. TUC: If the workers concerned are covered by collective agreements, then there will be no problems.

Haiti. Work performed through subcontracting should be further classified and addressed; workers involved in assembly lines should be treated separately; for work performed abroad, the percentage of the work force required should be established.

Indonesia. Consideration must be given to the duration of contracts and the maximum extension of contract periods.

Japan. ZENROREN: See *General observations.*

Mexico. Representatives of subcontracting enterprises in various countries should be consulted and efforts should be made to obtain information on subcontractors operating in the informal sector.

Netherlands. VNO-NCW: No.

FNV, CNV, MHP: More attention to the delicate problem of proliferation of forms of contract labour (Chapter II of Report VI (1)) in the proposed instrument might be helpful in guiding and regulating these labour market processes. It might for instance include a provision that protects workers against involuntary transfers from normal employment relationships to other forms of contracts, while continuing to do the same job. Another suggestion is that governments should not prevent collective agreements from banning or restricting the use of contract labour.

New Zealand. See *General observations.*

Pakistan. A bond should be obtained from the subcontractor so as to make compensatory payment in case of his failure to do so. Financial liabilities such as compensation in case of occupational accidents and other payments to contract workers must be guaranteed by the subcontractor. Such a guarantee should also be obtained from the principle employer in case the contractor fails to fulfil his obligations.

Poland. Solidarnosc: The questionnaire does not address the problems of providing protection for workers in regular employment who may be adversely affected by contract labour.

Rwanda. CESTRAR: The Convention should also address the claims of contract workers arising out of the insolvency of the subcontractor or of other situations where the subcontractor ceases to exist. The Recommendation should provide guidance on how governments can take specific measures to protect the right of contract workers to organize and to bargain collectively. The questionnaire does not address the problem of providing protection to workers in regular employment relationships who may be adversely affected by contract labour. This is an area that should be addressed by the proposed instruments. For example, it might be suggested that labour legislation should not prevent collective bargaining agreements from placing restrictions on the use of contract labour.

South Africa. BSA: No.

United Kingdom. The different interpretations of the term "contract labour" thoughout the ILO's constituency could pose a problem.

TUC: The Convention might also address claims of contract workers arising from the insolvency of the subcontractor or where the subcontractor ceases to exist. The Recommendation might provide guidance to governments on measures that could be taken to protect the right of contract workers to organize and to bargain collectively. The issue of providing protection for workers in regular employment relationships who may be adversely affected by contract labour should be covered in the instruments. This could include consultation with the representatives of regular employees of the user enterprise about the possible use of contract labour, and collective agreements should be able to place restrictions on its use.

United States. The discussion among the members States may raise additional problems.

Yemen. It would be appreciated if the instrument deal with the problem of labour conflict settlement as it relates to contract labour.

Several problems raised in the replies to this question have already been dealt with in the commentaries to the preceding questions and in the corresponding Points in the Proposed Conclusions. Some of the replies draw the attention of the Office to problems which have not been covered in the questionnaire. The Office is however of the opinion that, given the widely recognized difficulty of the subject under consideration, it would not be appropriate at present for it to extend the scope or content of the proposed instruments by inviting the Conference to include new issues in the text which might then become too constraining for member States. While recognizing that the problems raised in these replies deserve careful examination, the Office considers that it would be preferable, unless otherwise decided by the Conference, to confine the issue for the time being to the Points proposed in the Conclusions.

PROPOSED CONCLUSIONS

The following are the Proposed Conclusions which have been prepared on the basis of the replies summarized and commented upon in this report. They have been drafted in the usual form and are intended to serve as a basis for discussion by the International Labour Conference of the sixth item on the agenda of its 85th Session (1997).

A. Form of the instruments

1. The International Labour Conference should adopt standards on contract labour.

2. These standards should take the form of a Convention supplemented by a Recommendation.

B. Conclusions proposed with a view to a Convention

I. PREAMBLE

3. The Preamble should recognize that, having regard to the growing recourse to contract labour, it would be appropriate to adopt new standards on the subject with a view to ensuring that contract workers enjoy adequate protection.

II. METHODS OF APPLICATION

4. The provisions of the proposed Convention should be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.

III. DEFINITIONS

5. For the purposes of the proposed Convention the term "contract labour" should mean work performed for a natural or legal person (referred to as a "user enterprise") by a person (referred to as a "contract worker"), pursuant to a contractual arrangement other than a contract of employment with the user enterprise, under actual conditions of dependency on or subordination to the user enterprise, where these conditions are similar to those that characterize an employment relationship under national law and practice.

IV. SCOPE

6. The proposed Convention should apply to all branches of economic activity and to all contract workers. It should not apply to employees of private employment agencies who are made available to a user enterprise to perform contract labour.

7. The competent authority, after consulting the most representative organizations of employers and workers, may exclude from the scope of the proposed Convention or from all or any provisions of its Part V:

(a) other particular categories of contract workers who otherwise enjoy adequate protection,
or

(b) particular branches of economic activity when the application of the Convention in respect of them would raise special problems of a substantial nature.

8. A Member which ratifies the proposed Convention should specify, in its first report under article 22 of the Constitution of the International Labour Organization, any exclusion of which it avails itself under Point 7, and give the reasons therefor.

V. CONTENT OF THE PROPOSED CONVENTION

9. (1) The Member should ensure that adequate measures are taken to prevent accidents and injury to the health of contract workers arising out of, linked with or occurring in the course of contract labour.

(2) Measures should be taken to provide, in accordance with national law and practice, adequate protection in relation to the payment of:

(a) amounts due to contract workers for the work performed; and

(b) any social insurance contributions payable on behalf of such workers in relation to this work.

(3) Measures should be taken to ensure, in accordance with national law and practice, that contract workers receive compensation in case of injury or disease resulting from the performance of contract labour.

10. Contract workers should also be provided, as appropriate, with adequate protection as regards:

(a) the right to organize and the right to bargain collectively;

(b) freedom from discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction or social origin;

(c) minimum age;

(d) working time and other working conditions;

(e) maternity protection.

11. The Member should take measures to ensure that contract labour is not used for the purpose of denying rights or avoiding obligations under labour or social security laws and regulations.

12. Supervision of the implementation of provisions to give effect to the proposed Convention should be ensured by the competent public authorities, including the labour inspectorate.

13. Adequate remedies, including penalties where appropriate, should be provided for and effectively applied in case of violations of the provisions referred to in Point 12.

14. The provisions of the proposed Convention should not affect more favourable provisions under other international labour Conventions applicable to the workers concerned.

C. Conclusions proposed with a view to a Recommendation

I. General provision

15. The provisions of the proposed Recommendation should supplement those of the proposed Convention and should be applied in conjunction with them.

II. Definitions

16. For the purposes of the Recommendation:

(1) The term "contract labour" should mean work performed for a natural or legal person (referred to as a "user enterprise") by a person (referred to as a "contract worker"), pursuant to a contractual arrangement other than a contract of employment with the user enterprise, under actual conditions of dependency on or subordination to the user enterprise, where these conditions are similar to those that characterise an employment relationship under national law and practice;

(2) the term "subcontractor" should mean a natural or legal person who performs work for a user enterprise under a contractual arrangement with it, other than a contract of employment;

(3) the term "intermediary" should mean a natural or legal person who makes contract workers available to a user enterprise without becoming formally the employer of these workers;

(4) in determining whether the conditions of dependency or subordination referred to in paragraph (1) above are met, a Member could consider one or more of the following criteria:

(a) the extent to which the user enterprise determines when and how work should be performed, including working time and other conditions of work of the contract worker;

(b) whether the user enterprise pays amounts due to the contract worker periodically and according to preestablished criteria;

(c) the extent of supervisory authority and control of the user enterprise over the contract worker in respect to the work performed, including disciplinary authority;

(d) the extent to which the user enterprise makes investments and provides tools, materials and machinery, among other things, to perform the work concerned;

(e) whether the contract worker can make profits or run the risk of losses in performing the work;

(f) whether the work is performed on a regular and continuous basis;

(g) whether the contract worker works only for a single user enterprise;

(h) the extent to which the work performed is integrated into the normal activities of the user enterprise;

(i) whether the user enterprise provides training to the contract worker.

III. CONTENT OF THE RECOMMENDATION

17. Appropriate measures should be taken to ensure that contract workers are informed, in an appropriate and easily understandable manner, about their pay (including how it will be determined) and their conditions of work.

18. Measures should be taken, as appropriate, to ensure that contract workers are afforded equal treatment with employees of the user enterprise or, as the case may be, with employees of the subcontractor or of the intermediary, for performing work which is essentially similar, under similar conditions and requiring similar qualifications.

19. In specified circumstances (for example, where contract labour is used mainly or solely for the purpose of denying rights or avoiding obligations under labour or social security laws and regulations), contract workers should be assimilated to employees of the user enterprise or, as the case may be, to employees of the subcontractor or of the intermediary.

20. (1) Contract workers should not be made available to a user enterprise to replace workers of that enterprise who are exercising their right to strike.

(2) Contract labour might be prohibited in specified circumstances, such as where:

(a) contract workers are made available by intermediaries;

(b) hazardous work is performed;

(c) work affects national security.

21. Measures should be taken to ensure that contract workers may refuse to perform work which they have reasonable justification to believe poses a serious danger to their safety and health.

22. (1) National law and practice should apportion responsibility between the subcontractor (or the intermediary, as the case may be) and the user enterprise for fulfilling obligations toward contract workers, taking into account the extent of the workers' dependency on or subordination to them.

(2) When the party responsible for fulfilling the obligations referred to in subparagraph (1) does not meet them, the other party, where appropriate, should be made responsible for doing so.

23. (1) To the extent provided for by national law, financial obligations toward a contract worker might be jointly and severally shared by the subcontractor or by the intermediary and the user enterprise, or among all of them, as the case may be.

(2) In the event of insolvency of the user enterprise, the subcontractor or the intermediary, the outstanding claims of a contract worker should be given the same priorities as those established by national law and practice with regard to a worker's claims against his or her employer.

24. (1) Recourse to contract labour might, in accordance with national laws and regulations, be subject to an obligation incumbent on the subcontractor or the intermediary to register with or to obtain a licence from the competent authority.

(2) Registration or licensing might depend upon the subcontractor or the intermediary demonstrating its viability and capacity to meet its obligations toward contract workers, or posting a bond sufficient to cover its obligations to such workers.

25. Members should, where possible, compile, keep up to date and make publicly available statistics and other information on contract labour.

26. Members should take measures, as appropriate, to provide protection to contract workers who perform work in a country other than their own.

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